

HOUSE BILL No. 2784

By Committee on Health and Human Services

Requested by Representative Landwehr

2-8

1 AN ACT concerning adult care homes; relating to continuing care
2 retirement communities; transferring authority for certification of such
3 facilities from the Kansas insurance department to the Kansas
4 department for aging and disability services; ~~lowering the nursing~~
5 ~~facility provider assessment for such facilities~~; amending K.S.A. 39-
6 923, 40-2231, 40-2232, 40-2233, 40-2234, 40-2235 and 40-2238 and
7 K.S.A. 2023 Supp. 39-936 ~~and 75-7435~~ and repealing the existing
8 sections.
9

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

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

13 (1) "Adult care home" means any nursing facility, nursing facility for
14 mental health, intermediate care facility for people with intellectual
15 disability, assisted living facility, residential healthcare facility, home plus,
16 boarding care home, ~~continuing care retirement community~~ and adult day
17 care facility; all of which are classifications of adult care homes and are
18 required to be licensed by the secretary for aging and disability services.

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

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

30 (4) "Intermediate care facility for people with intellectual disability"
31 means any place or facility operating 24 hours a day, seven days a week,
32 caring for four or more individuals not related within the third degree of
33 relationship to the administrator or owner by blood or marriage and who,

1 due to functional impairments caused by intellectual disability or related
2 conditions, need services to compensate for activities of daily living
3 limitations.

4 (5) "Assisted living facility" means any place or facility caring for six
5 or more individuals not related within the third degree of relationship to
6 the administrator, operator or owner by blood or marriage and who, by
7 choice or due to functional impairments, may need personal care and ~~may~~
8 ~~need~~ supervised nursing care to compensate for activities of daily living
9 limitations and in which the place or facility includes apartments for
10 residents and provides or coordinates a range of services including
11 personal care or supervised nursing care available 24 hours a day, seven
12 days a week, for the support of resident independence. The provision of
13 skilled nursing procedures to a resident in an assisted living facility is not
14 prohibited by this act. Generally, the skilled services provided in an
15 assisted living facility shall be provided on an intermittent or limited term
16 basis, or if limited in scope, a regular basis.

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

31 (7) "Home plus" means any residence or facility caring for not more
32 than 12 individuals not related within the third degree of relationship to the
33 operator or owner by blood or marriage unless the resident in need of care
34 is approved for placement by the secretary for children and families, and
35 who, due to functional impairment, needs personal care and may need
36 supervised nursing care to compensate for activities of daily living
37 limitations. The level of care provided to residents shall be determined by
38 preparation of the staff and rules and regulations developed by the Kansas
39 department for aging and disability services. An adult care home may
40 convert a portion of one wing of the facility to a not less than five-bed ~~and~~
41 ~~but~~ not more than 12-bed home plus facility ~~provided that if~~ the home plus
42 facility remains separate from the adult care home, and each facility ~~must~~
43 ~~remain~~ *remains* contiguous. Any home plus that provides care for more

1 than eight individuals after the effective date of this act shall adjust
2 staffing personnel and resources as necessary to meet residents' needs in
3 order to maintain the current level of nursing care standards. Personnel of
4 any home plus who provide services for residents with dementia shall be
5 required to take annual dementia care training.

6 (8) "Boarding care home" means any place or facility operating 24
7 hours a day, seven days a week, caring for not more than 10 individuals
8 not related within the third degree of relationship to the operator or owner
9 by blood or marriage and who, due to functional impairment, need
10 supervision of activities of daily living but who are ambulatory and
11 essentially capable of managing their own care and affairs.

12 (9) *"Continuing care retirement community" means any place or*
13 *facility that combines a range of housing and services to encompass the*
14 *continuum of aging care needs provided at an independent living facility,*
15 *an assisted living facility, a residential healthcare facility*~~and~~*, home plus*
16 *or a skilled nursing care facility within a single place or facility to avoid*
17 *the need for residents to relocate to a separate place or facility. The*
18 *provision of community care includes the multiple levels of care provided*
19 *within as part of a continuing care retirement community.*

20 (10) "Adult day care" means any place or facility operating less than
21 24 hours a day caring for individuals not related within the third degree of
22 relationship to the operator or owner by blood or marriage and who, due to
23 functional impairment, need supervision of or assistance with activities of
24 daily living.

25 ~~(10)~~(11) "Place or facility" means a building or any one or more
26 complete floors of a building, or any one or more complete wings of a
27 building, or any one or more complete wings and one or more complete
28 floors of a building; ~~and the term. "Place or facility" may include~~ **includes**
29 multiple buildings.

30 ~~(11)~~(12) "Skilled nursing care" means services performed by or under
31 the immediate supervision of a registered professional nurse and additional
32 licensed nursing personnel. Skilled nursing includes administration of
33 medications and treatments as prescribed by a licensed physician or
34 dentist; and other nursing functions that require substantial nursing
35 judgment and skill based on the knowledge and application of scientific
36 principles.

37 ~~(12)~~(13) "Supervised nursing care" means services provided by or
38 under the guidance of a licensed nurse with initial direction for nursing
39 procedures and periodic inspection of the actual act of accomplishing the
40 procedures; administration of medications and treatments as prescribed by
41 a licensed physician or dentist and assistance of residents with the
42 performance of activities of daily living.

43 ~~(13)~~(14) "Resident" means all individuals kept, cared for, treated,

1 boarded or otherwise accommodated in any adult care home.

2 ~~(14)~~(15) "Person" means any individual, firm, partnership,
3 corporation, company, association or joint-stock association, and the legal
4 successor thereof.

5 ~~(15)~~(16) "Operate an adult care home" means to own, lease, sublease,
6 establish, maintain, conduct the affairs of or manage an adult care home,
7 except that for the purposes of this definition the ~~word~~ words "own" and
8 ~~the word~~ "lease" ~~shall do~~ not include hospital districts, cities and counties
9 that hold title to an adult care home purchased or constructed through the
10 sale of bonds.

11 ~~(16)~~(17) "Licensing agency" means the secretary for aging and
12 disability services.

13 ~~(17)~~(18) "Skilled nursing home" means a nursing facility.

14 ~~(18)~~(19) "Intermediate nursing care home" means a nursing facility.

15 ~~(19)~~(20) "Apartment" means a private unit that includes, but is not
16 limited to, a toilet room with bathing facilities, a kitchen, sleeping, living
17 and storage area and a lockable door.

18 ~~(20)~~(21) "Individual living unit" means a private unit that includes,
19 but is not limited to, a toilet room with bathing facilities, sleeping, living
20 and storage area and a lockable door.

21 ~~(21)~~(22) "Operator" means an individual registered pursuant to the
22 operator registration act, K.S.A. 39-973 et seq., and amendments thereto,
23 who may be appointed by a licensee to have the authority and
24 responsibility to oversee an assisted living facility or residential healthcare
25 facility with fewer than 61 residents, a home plus or adult day care facility.

26 ~~(22)~~(23) "Activities of daily living" means those personal, functional
27 activities required by an individual for continued well-being, including,
28 but not limited to, eating, nutrition, dressing, personal hygiene, mobility
29 and toileting.

30 ~~(23)~~(24) "Personal care" means care provided by staff to assist an
31 individual with; or to perform activities of daily living.

32 ~~(24)~~(25) "Functional impairment" means an individual has
33 experienced a decline in physical, mental and psychosocial well-being
34 and, as a result, is unable to compensate for the effects of the decline.

35 ~~(25)~~(26) "Kitchen" means a food preparation area that includes a
36 sink, refrigerator and a microwave oven or stove.

37 ~~(26)~~(27) ~~The term~~ "Intermediate personal care home" for purposes of
38 those individuals applying for or receiving veterans' benefits means
39 residential healthcare facility.

40 ~~(27)~~(28) "Paid nutrition assistant" means an individual who is paid to
41 feed residents of an adult care home, or who is used under an arrangement
42 with another agency or organization, who is trained by a person meeting
43 nurse aide instructor qualifications as prescribed by 42 C.F.R. § 483.152,

1 42 C.F.R. § 483.160 and 42 C.F.R. § 483.35(h), and who provides such
2 assistance under the supervision of a registered professional or licensed
3 practical nurse.

4 ~~(28)~~(29) "Medicaid program" means the Kansas program of medical
5 assistance for which federal or state moneys, or any combination thereof,
6 are expended, ~~or~~ any successor federal or state, or both, health insurance
7 program or waiver granted thereunder.

8 ~~(29)~~(30) "Licensee" means any person or persons acting jointly or
9 severally who are licensed by the secretary for aging and disability
10 services pursuant to the adult care home licensure act, K.S.A. 39-923 et
11 seq., and amendments thereto.

12 ~~(30)~~(31) "Insolvent" means that the adult care home; or any
13 individual or entity that operates an adult care home or appears on the
14 adult care home license; *and* has stopped paying debts in the ordinary
15 course of business or is unable to pay debts as they come due in the
16 ordinary course of business.

17 (b) The term "adult care home" does not include institutions operated
18 by federal or state governments, except institutions operated by the
19 director of the Kansas commission on veterans affairs office, hospitals or
20 institutions for the treatment and care of psychiatric patients, child care
21 facilities, maternity centers, hotels, offices of physicians or hospices that
22 are certified to participate in the medicare program under 42 C.F.R. §
23 418.1 et seq., and ~~that~~ provide services only to hospice patients, or centers
24 approved by the centers for medicare and medicaid services as a program
25 for all-inclusive care for the elderly (PACE) under 42 C.F.R. § 460 et seq.,
26 that provides services only to PACE participants.

27 (c) Nursing facilities in existence on the effective date of this act
28 changing licensure categories to become residential healthcare facilities
29 shall be required to provide private bathing facilities in a minimum of 20%
30 of the individual living units.

31 (d) Facilities licensed under the adult care home licensure act on the
32 day immediately preceding the effective date of this act shall continue to
33 be licensed facilities until the annual renewal date of such license and may
34 renew such license in the appropriate licensure category under the adult
35 care home licensure act subject to the payment of fees and other conditions
36 and limitations of such act.

37 (e) Nursing facilities with ~~less~~ *fewer* than 60 beds converting a
38 portion of the facility to residential healthcare shall have the option of
39 licensing for residential healthcare for ~~less~~ *fewer* than six individuals but
40 not less than 10% of the total bed count within a contiguous portion of the
41 facility.

42 (f) The licensing agency may by rule and regulation change the name
43 of the different classes of homes when necessary to avoid confusion in

1 terminology, and ~~the~~ *such* agency may further amend, substitute, change
2 and in a manner consistent with the definitions established in this section,
3 further define and identify the specific acts and services that shall fall
4 within the respective categories of facilities so long as the above categories
5 for adult care homes are used as guidelines to define and identify the
6 specific acts.

7 Sec. 2. K.S.A. 2023 Supp. 39-936 is hereby amended to read as
8 follows: 39-936. (a) The presence of each resident in an adult care home
9 shall be covered by a statement provided at the time of admission, or prior
10 thereto, setting forth the general responsibilities and services and daily or
11 monthly charges for such responsibilities and services. Each resident shall
12 be provided with a copy of such statement, with a copy going to any
13 individual responsible for payment of such services and the adult care
14 home shall keep a copy of such statement in the resident's file. No such
15 statement shall be construed to relieve any adult care home of any
16 requirement or obligation imposed upon it by law or by any requirement,
17 standard or rule and regulation adopted pursuant thereto.

18 (b) A qualified person shall be in attendance at all times when
19 residents receive accommodation, board, care, training or treatment in
20 adult care homes. The licensing agency may establish necessary standards
21 and rules and regulations prescribing the number, qualifications, training,
22 standards of conduct and integrity for such qualified person attendant upon
23 the residents.

24 (c) (1) The licensing agency shall require unlicensed employees
25 working in an adult care home, except an adult care home licensed for the
26 provision of services to people with intellectual disability that has been
27 granted an exception by the secretary for aging and disability services
28 upon a finding by the licensing agency that an approved training program
29 for certified nurse aides is in place for such adult care home, who provide
30 direct, individual care to residents and who do not administer medications
31 to residents and who have not completed a course of education and
32 training relating to resident care and treatment approved by the secretary
33 for aging and disability services or are not participating in such a course to
34 complete successfully 40 hours of training in basic resident care skills.
35 Any unlicensed employee who has not completed at least 40 hours of the
36 certified nurse aide training approved by the secretary for aging and
37 disability services or who is not making progress to complete the course of
38 education and training required by the secretary for aging and disability
39 services under paragraph (2) within four months following completion of
40 such 40 hours shall not provide direct, individual care to residents.

41 (A) The 40 hours of training and remaining hours in the certified
42 nurse aide training shall be performed under the general supervision of a
43 course supervisor. The course supervisor shall be defined in rules and

1 regulations and approved by the secretary for aging and disability services.
2 As used in this subparagraph, "supervision" means the same as defined in
3 K.S.A. 65-1165, and amendments thereto. The 40 hours of training may be
4 prepared and administered by an adult care home, hospital, as defined in
5 K.S.A. 65-425, and amendments thereto, hospice or program for all-
6 inclusive care for the elderly or by any other qualified course sponsor and
7 may be conducted on the premises of the adult care home, hospital,
8 hospice or program for all-inclusive care for the elderly. The 40 hours of
9 training required in this section shall be a part of an approved certified
10 nurse aide training course required by the secretary for aging and disability
11 services under subsection (c)(2).

12 (B) Each instructor under the supervision of a course supervisor of
13 the certified nurse aide training course shall be licensed to practice in
14 Kansas and in good standing. As used in this subparagraph, "in good
15 standing" includes the possession of a license, certificate or registration
16 that is subject to probation or non-disciplinary conditions, limitations or
17 restrictions, but does not include a license, certificate or registration that is
18 revoked, canceled or surrendered or subject to pending license-related
19 disciplinary action. If the records of the Kansas department for aging and
20 disability services reflect that an individual has a prohibiting offense, such
21 license, certificate or registration shall not be considered "in good
22 standing." Any license, certificate or registration that is subject to
23 disciplinary conditions, limitations or restrictions shall remain subject to
24 such conditions, limitations or restrictions.

25 (C) Training for paid nutrition assistants shall consist of at least eight
26 hours of instruction, at a minimum, that meets the requirements of 42
27 C.F.R. § 483.160.

28 (2) The licensing agency may require unlicensed employees working
29 in an adult care home, except an adult care home licensed for the provision
30 of services to people with intellectual disability that has been granted an
31 exception by the secretary for aging and disability services upon a finding
32 by the licensing agency that an appropriate training program for certified
33 nurse aides is in place for such adult care home, who provide direct,
34 individual care to residents and who do not administer medications to
35 residents and who do not meet the definition of paid nutrition assistant
36 ~~under as defined in~~ K.S.A. 39-923(a)(27), and amendments thereto, after
37 90 days of employment to successfully complete an approved course of
38 instruction and an examination relating to resident care and treatment as a
39 condition to continued employment by an adult care home.

40 (A) A course of instruction may be prepared and administered by any
41 adult care home, hospital, as defined in K.S.A. 65-425, and amendments
42 thereto, hospice or program for all-inclusive care for the elderly or by any
43 other qualified person. A course of instruction prepared and administered

1 by an adult care home, hospital, hospice or program for all-inclusive care
2 for the elderly may be conducted on the premises of the adult care home,
3 hospital, hospice or program for all-inclusive care for the elderly that
4 prepared and that will administer the course of instruction.

5 (B) As evidence of successful completion of the training course, such
6 unlicensed employees shall demonstrate competency in a list of skills that
7 are identified and prescribed by the secretary for aging and disability
8 services. The skills demonstration shall be evaluated by a registered
9 professional nurse licensed, including multistate licensure privilege, and in
10 good standing in this state. Such registered professional nurse shall have at
11 least one year of licensed nurse experience providing care for the elderly
12 or chronically ill in a healthcare setting approved by the secretary for
13 aging and disability services. As used in this subparagraph, "in good
14 standing" includes the possession of a license, certificate or registration
15 that is subject to probation or non-disciplinary conditions, limitations or
16 restrictions, but does not include a license, certificate or registration that is
17 revoked, canceled or surrendered or subject to pending license-related
18 disciplinary action. If the records of the Kansas department for aging and
19 disability services reflect that an individual has a prohibiting offense, such
20 license, certificate or registration shall not be considered "in good
21 standing." Any license, certificate or registration that is subject to
22 disciplinary conditions, limitations or restrictions shall remain subject to
23 such conditions, limitations or restrictions.

24 (3) The licensing agency shall not require unlicensed employees
25 working in an adult care home who provide direct, individual care to
26 residents and who do not administer medications to residents to enroll in
27 any particular approved course of instruction as a condition to the taking
28 of an examination, but the secretary for aging and disability services shall
29 prepare guidelines for the preparation and administration of courses of
30 instruction and shall approve or disapprove courses of instruction.

31 (4) Unlicensed employees working in adult care homes who provide
32 direct, individual care to residents and who do not administer medications
33 to residents may enroll in any approved course of instruction and upon
34 completion of the approved course of instruction shall be eligible to take
35 an examination. The examination shall be:

36 (A) Prescribed by the secretary for aging and disability services;

37 (B) reasonably related to the duties performed by unlicensed
38 employees working in adult care homes who provide direct, individual
39 care to residents and who do not administer medications to residents; and

40 (C) the same examination given by the secretary for aging and
41 disability services to all unlicensed employees working in adult care
42 homes who provide direct, individual care to residents and who do not
43 administer medications.

1 (5) The secretary for aging and disability services shall fix, charge
2 and collect a fee to cover all or any part of the costs of the licensing
3 agency under this subsection. The fee shall be fixed by rules and
4 regulations of the secretary for aging and disability services. The fee shall
5 be remitted to the state treasurer in accordance with the provisions of
6 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
7 remittance, the state treasurer shall deposit the entire amount in the state
8 treasury to the credit of the health occupations credentialing fee fund
9 created by K.S.A. 39-979, and amendments thereto.

10 (6) The secretary for aging and disability services shall establish a
11 state registry containing information about certified nurse aides working in
12 adult care homes who provide direct, individual care to residents and who
13 do not administer medications in compliance with the requirements
14 pursuant to PL 100-203, subtitle C, as amended November 5, 1990.

15 (7) No adult care home shall use an individual working as a certified
16 nurse aide in an adult care home who provides direct, individual care to
17 residents and who does not administer medications unless the facility has
18 inquired of the state registry as to information contained in the registry
19 concerning the individual.

20 (8) (A) The adult care home shall require any certified nurse aide
21 working in an adult care home to complete an approved refresher course if
22 such employee:

23 (i) Provides direct, individual care to residents;

24 (ii) does not administer medications; and

25 (iii) since passing the examination required under paragraph (2), has
26 had a continuous period of 24 consecutive months when the certified nurse
27 aide has not provided direct, individual care to residents.

28 (B) The secretary for aging and disability services shall prepare
29 guidelines for the preparation and administration of refresher courses and
30 shall approve or disapprove courses.

31 (d) Any person who has been employed as a certified nurse aide
32 working in an adult care home in another state may be so employed in this
33 state without an examination if the secretary for aging and disability
34 services determines that such other state requires training or examination,
35 or both, for such employees at least equal to that required by this state.

36 (e) All medical care and treatment shall be given under the direction
37 of a person licensed by the state board of healing arts to practice medicine
38 and surgery and shall be provided promptly as needed.

39 (f) No adult care home shall require as a condition of admission to or
40 as a condition to continued residence in the adult care home that a person
41 change from a supplier of medication needs of their choice to a supplier of
42 medication selected by the adult care home. Nothing in this subsection
43 shall be construed to abrogate or affect any agreements entered into prior

1 to the effective date of this act between the adult care home and any person
2 seeking admission to or resident of the adult care home.

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

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

12 Sec. 3. K.S.A. 40-2231 is hereby amended to read as follows: 40-
13 2231. As used in this act:

14 (a) *"Continuing care" means the multiple levels of care provided*
15 ~~*within as part of a continuing care retirement community, as defined in*~~
16 ~~*K.S.A. 39-923, and amendments thereto.*~~

17 (b) "Continuing care contract" means an agreement pursuant to which
18 a provider undertakes to furnish to a person, not related by consanguinity
19 or affinity to the provider, shelter and medical or nursing services or other
20 health-related benefits ~~which that~~ require a present or deferred transfer of
21 assets or an entrance fee ~~in the amount of \$5,000 or equivalent value or~~
22 ~~such greater amount as set by the commissioner in rules and regulations in~~
23 ~~addition to or in lieu of periodic charges. Continuing care contract shall~~
24 ~~also mean an agreement of any other provider who voluntarily applies for~~
25 ~~a certificate pursuant to K.S.A. 40-2235.~~

26 (b)(c) "Entrance fee" means the total of any initial or deferred transfer
27 to, or for the benefit of, a provider of a sum of money or other property
28 made or promised to be made as full or partial consideration for
29 acceptance of a person as a resident pursuant to a continuing care contract.

30 (e)(d) "Home" means the facility or facilities occupied, or planned to
31 be occupied, by five or more residents where the provider undertakes
32 pursuant to the continuing care contract to provide continuing care to such
33 residents.

34 (d)(e) "Provider" or "continuing care provider" means the person,
35 corporation, partnership, association or other legal entity ~~which that~~ agrees
36 to provide continuing care to residents in a home.

37 (e)(f) "Resident" means an individual or individuals who have entered
38 into an agreement with a provider for continuing care in a home.

39 (f)(g) ~~"Commissioner~~*Secretary"* ~~means commissioner of insurance of~~
40 ~~the state of Kansas~~ *the secretary for aging and disability services.*

41 (h) *"Act" means the provisions of K.S.A. 40-2231 through 40-2238*
42 ~~*and amendments thereto.*~~

43 Sec. 4. K.S.A. 40-2232 is hereby amended to read as follows: 40-

1 2232. A provider shall be required to complete an annual disclosure
2 statement prescribed by the ~~commissioner~~ *secretary* and shall be required
3 to deliver the disclosure statement to individuals who are prospective
4 residents, or current residents who request such disclosure statement. The
5 text of the disclosure statement shall contain the following information:

6 (a) The name and business address of the provider and a statement of
7 whether the provider is an individual, partnership, corporation or any other
8 legal entity.

9 (b) The names of the individual or individuals who constitute the
10 provider or, if the provider is a partnership, corporation or other legal
11 entity, whether for profit or not for profit, the names of the officers,
12 directors, trustees or managing or general partners of the provider. If the
13 provider is a corporation, the name of any individual who owns 10% or
14 more of the stock of such corporation shall also be disclosed.

15 (c) With respect to a provider ~~which~~ *that* is either not incorporated or
16 not established and operated on a not-for-profit basis, the names and
17 business addresses of any individual having any ownership or any
18 beneficial interest in the provider and a description of such individual's
19 interest in or occupation with the provider.

20 (d) A statement as to whether or not the provider is, or is affiliated
21 with, a religious, charitable or other nonprofit organization and the extent
22 of the affiliation, if any; the extent to which any affiliate organization will
23 be responsible for the financial and contractual obligations of the
24 provider; the provision of the United States internal revenue code, if any,
25 under which the provider or any of the provider's affiliates is or are exempt
26 from the payment of federal income taxes; and; a statement of whether the
27 home is exempt from local property taxation.

28 (e) A statement that the provider is required to have an annual
29 certified audit by a certified public accountant and that a copy of such
30 audit shall be made available upon request.

31 (f) If the operation of the home has not yet commenced, and with
32 receipt of contract considerations as defined in K.S.A. 40-2231 ~~(a) and (b)~~
33 *and (c), and amendments thereto*, the provider shall provide a statement of
34 the anticipated source and application of the funds used or to be used in
35 the purchase or construction of the facility, including but not limited to:

36 (1) An estimate of such costs as financing expense, legal expense,
37 land costs, marketing costs and other similar costs ~~which~~ *that* the provider
38 expects to incur or become obligated for prior to the commencement of
39 operations;

40 (2) a description of any mortgage loan or any other financing
41 intended to be used for the financing of the facility, including the
42 anticipated terms and costs of such financing;

43 (3) an estimate of the total entrance fee to be received from or on

1 behalf of residents at or prior to commencement of operation; and

2 (4) an estimate of the funds, if any, ~~which~~ *that* are anticipated to be
3 necessary to fund start-up losses and provide reserve funds to assure full
4 performance of the obligations of the provider under continuing care
5 contracts.

6 (g) A statement as to whether the manager or any official or director
7 of the provider, has been convicted of a crime or been a party of any civil
8 action claiming fraud, embezzlement, fraudulent conversion or
9 misappropriation of property ~~which~~ *that* resulted in a judgment against
10 such person and whether any such person has had any state or federal
11 license or permits related to care and housing suspended or revoked.

12 (h) A statement of the years of experience of the provider and
13 manager in the operation of homes providing continuing care.

14 (i) A statement of the fiscal year of the provider.

15 Sec. 5. K.S.A. 40-2233 is hereby amended to read as follows: 40-
16 2233. ~~On or before April 1 of each year.~~ A provider shall file with the
17 ~~commissioner secretary within four months of completion of such~~
18 ~~provider's fiscal year~~ ***within four months of completion of such***
19 ***provider's fiscal year*** the annual disclosure statement referred to in K.S.A.
20 40-2232, *and amendments thereto*, the continuing care contract referred to
21 in K.S.A. 40-2234, *and amendments thereto*, and an annual audit certified
22 by a certified public accountant.

23 Sec. 6. K.S.A. 40-2234 is hereby amended to read as follows: 40-
24 2234. The provider shall provide the ~~commissioner~~ *secretary* a copy of any
25 continuing care contract form entered into on or after the effective date of
26 this act or entered into between the provider and any resident, which shall
27 include or have attached thereto:

28 (a) A description of all fees and or charges required of residents, a
29 description of all services to be provided or committed to providing in the
30 future *in compliance with the definitions in K.S.A. 39-923, and*
31 *amendments thereto*, and a description of any services for which an extra
32 charge is made over and above entrance fees and periodic charges that are
33 provided for in the contract;

34 (b) a listing of the terms and conditions under which the agreement
35 may be cancelled by either party to the agreement or by which any or all of
36 the entrance fee or transfer of assets would be refunded, less the value of
37 any services received; and

38 (c) a statement describing health and financial conditions required to
39 continue as a resident, including any changes in either health or financial
40 conditions of the resident.

41 Sec. 7. K.S.A. 40-2235 is hereby amended to read as follows: 40-
42 2235. No provider shall act as or hold themselves out to be a continuing
43 care provider, as defined in this act, in this state, unless the provider shall

1 hold a certificate of registration as a continuing care provider issued by the
 2 ~~commissioner of insurance~~ *secretary*. Application for such certificate shall
 3 be made to the ~~commissioner~~ *secretary* on a form prescribed by such
 4 ~~commissioner~~ *secretary* and shall be accompanied by a filing fee of \$50.
 5 Such certificate may be continued for successive annual periods by
 6 notifying the ~~commissioner of insurance~~ *secretary* of such intent and
 7 payment of a \$25 continuation fee. Such certificate shall be issued *or*
 8 *renewed* to a continuing care provider ~~or continued by the commissioner~~
 9 *secretary if unless the commissioner secretary after due notice and hearing*
 10 *shall have determined determines* that the continuing care provider is ~~not~~
 11 in compliance with this act ~~on or before April 1 of the current calendar~~
 12 ~~year~~ *within four months of completion of such provider's fiscal year*. If
 13 **certification is not issued or renewed, the provider may appeal such**
 14 **decision in accordance with the Kansas administrative procedure act.**
 15 **Judicial review under this act shall be in accordance with the Kansas**
 16 **judicial review act.**

17 Sec. 8. K.S.A. 40-2238 is hereby amended to read as follows: 40-
 18 2238. The ~~commissioner~~ *secretary* shall ~~promulgate~~ *adopt any* rules and
 19 regulations necessary to carry out the provisions of this act.

20 Sec. 9. ~~K.S.A. 2023 Supp. 75-7435~~ is hereby amended to read as
 21 follows: 75-7435. (a) As used in this section, unless the context requires
 22 otherwise:

23 (1) ~~Such words and phrases mean the same as defined by provided by~~
 24 ~~K.S.A. 39-923, and amendments thereto, mean the same as defined~~
 25 ~~therein.~~

26 (2) ~~"Agent" means the Kansas department for aging and disability~~
 27 ~~services.~~

28 (3) ~~"Continuing care retirement community" means a place or facility~~
 29 ~~holding a certificate of registration issued by the agent pursuant to K.S.A.~~
 30 ~~40-2235, and amendments thereto.~~

31 (4) ~~"High medicaid volume skilled nursing care facility" means any~~
 32 ~~facility that provided more than 25,000 days of nursing facility care to~~
 33 ~~medicaid recipients during the most recent calendar year cost-reporting~~
 34 ~~period.~~

35 (5) ~~"Licensed bed" means those beds within a skilled nursing care~~
 36 ~~facility that such facility is licensed to operate.~~

37 (6) ~~"Nursing facility provider assessment program" means the~~
 38 ~~determination, imposition, assessment, collection and management of an~~
 39 ~~annual assessment imposed on each licensed bed in a skilled nursing care~~
 40 ~~as facility as required by this section.~~

41 (7) ~~"Skilled nursing care facility" means a licensed nursing facility,~~
 42 ~~nursing facility for mental health as defined in K.S.A. 39-923, and~~
 43 ~~amendments thereto, or a hospital long-term care unit licensed by the~~

1 department of health and environment, providing skilled nursing care, but
2 shall ~~does not~~ include the Kansas soldiers' home or the Kansas veterans'
3 home.

4 ~~(8) "Skilled nursing care facility that is part of a continuing care~~
5 ~~retirement community" means a provider who is certified as such by the~~
6 ~~survey, certification and credentialing commission of the Kansas~~
7 ~~department for aging and disability services before the start of the state's~~
8 ~~fiscal year when the assessment process is occurring.~~

9 ~~(9) "Small skilled nursing care facility" means any facility with at~~
10 ~~least 40 but fewer than 46 licensed nursing facility beds.~~

11 (3) "Licensed bed" means those beds within a skilled nursing care
12 facility that the facility is licensed to operate.

13 (4) "Agent" means the Kansas department for aging and disability
14 services.(5) "Continuing care retirement facility" means a facility
15 holding a certificate of registration issued by the commissioner of
16 insurance pursuant to K.S.A. 40-2235, and amendments thereto.

17 (b) (1) ~~Except as otherwise provided in this section, there is hereby~~
18 ~~imposed and the secretary of health and environment agent shall assess an~~
19 ~~annual assessment per licensed bed, hereinafter called a quality care~~
20 ~~nursing facility provider assessment, on each skilled nursing care facility.~~
21 ~~The assessment rate on all facilities in the aggregate that provide skilled~~
22 ~~nursing care shall be an amount fixed by rules and regulations of the~~
23 ~~secretary of health and environment, shall not exceed \$4,908 at \$4,000~~
24 ~~annually per licensed bed. Such amount shall be imposed as an amount~~
25 ~~per licensed bed and shall be imposed uniformly on all skilled nursing care~~
26 ~~facilities. except that The assessment rate shall be reduced to \$2,000 for~~
27 ~~skilled nursing care facilities that are part of a continuing care retirement~~
28 ~~facility community, small skilled nursing care facilities and high medicaid~~
29 ~~volume skilled nursing care facilities. shall not exceed $\frac{1}{6}$ of the actual~~
30 ~~amount assessed all other skilled nursing care facilities. No Rules and~~
31 ~~regulations of adopted by the agent secretary of health and environment~~
32 ~~shall not grant any exception to or exemption from the quality care~~
33 ~~nursing facility provider assessment. The assessment shall be paid~~
34 ~~quarterly, with one fourth $\frac{1}{4}$ of the annual amount due by the 30th day after~~
35 ~~the end of the month of each calendar quarter. The secretary of health and~~
36 ~~environment is authorized to agent may establish delayed payment~~
37 ~~schedules for skilled nursing care facilities that are unable to make~~
38 ~~quarterly payments when due under this section due to financial~~
39 ~~difficulties, as determined by the secretary of health and environment~~
40 ~~agent. The agent may allow a skilled nursing facility an extension to~~
41 ~~complete payment of the assessment, but such extension shall not exceed~~
42 ~~90 days. As used in this paragraph, the terms "small skilled nursing care~~
43 ~~facilities" and "high medicaid volume skilled nursing care facilities" shall~~

1 be defined by the secretary of health and environment by rules and
2 regulations, except that the definition of "small skilled nursing care
3 facility" shall not be fewer than 40 beds.

4 (2) Beds licensed after July 1 each year shall pay a prorated amount
5 of the applicable annual assessment so that the assessment applies only for
6 ~~to~~ the days such new beds are licensed. The proration shall be calculated
7 by multiplying the applicable assessment by the percentage of days the
8 beds are licensed during the year. Any change that reduces the number of
9 licensed beds in a facility shall not result in a refund being issued to the
10 skilled nursing care facility.

11 (3) If an entity conducts, operates or maintains more than one
12 licensed skilled nursing care facility, the entity shall pay the nursing
13 facility assessment for each facility separately. No skilled nursing care
14 facility shall create a separate line-item charge for the purpose of passing
15 through the quality care ~~nursing facility provider~~ assessment to residents.
16 No skilled nursing care facility shall be guaranteed, expressly or
17 otherwise, that any additional moneys paid to the facility under this section
18 will equal or exceed the amount of its quality care ~~such facility's nursing~~
19 ~~facility provider~~ assessment.

20 (4) The payment of the quality care ~~nursing facility provider~~
21 assessment to the secretary of health and environment ~~agent~~ shall be an
22 allowable cost for medicaid reimbursement purposes. A rate adjustment
23 pursuant to subsection (d)(5) shall be made effective on the date of
24 imposition of the assessment, to reimburse the portion of this cost imposed
25 on medicaid days.

26 (5) The secretary of health and environment ~~agent~~ shall seek a waiver
27 from the United States department of health and human services to allow
28 the state to impose varying levels of assessments on skilled nursing care
29 facilities based on specified criteria. It is the intent of the legislature that
30 the waiver sought by the secretary of health and environment ~~agent~~ be
31 structured to minimize the negative fiscal impact on certain classes of
32 skilled nursing care facilities.

33 (e) Each skilled nursing care facility shall prepare and submit to the
34 secretary of health and environment ~~agent~~ any additional information
35 required and requested by the secretary of health and environment ~~agent~~ to
36 implement or administer the provisions of this section. Each skilled
37 nursing care facility shall prepare and submit quarterly to the secretary for
38 aging and disability services the rate the facility charges to private pay
39 residents, and the secretary shall cause this information to be posted on the
40 web site of the department for aging and disability services.

41 (d) (1) There is hereby created in the state treasury the quality care
42 ~~nursing facility provider~~ fund to be administered by the secretary of health
43 and environment ~~for aging and disability services~~. All moneys received for

1 the assessments imposed pursuant to subsection (b), including any penalty
2 assessments imposed thereon pursuant to subsection (c), shall be remitted
3 to the state treasurer in accordance with K.S.A. 75-4215, and amendments
4 thereto. Upon receipt of each such remittance, the state treasurer shall
5 deposit the entire amount in the state treasury to the credit of the quality
6 care *nursing facility provider* fund. All expenditures from the quality care
7 *nursing facility provider* fund shall be made in accordance with
8 appropriation acts upon warrants of the director of accounts and reports
9 issued pursuant to vouchers approved by the secretary of health and
10 environment *for health and environment* or the secretary's agent.

11 (2) All moneys in the quality care *nursing facility provider* fund shall
12 be used to finance initiatives to maintain or improve the quantity and
13 quality of skilled nursing care in skilled nursing care facilities in Kansas.
14 No moneys credited to the quality care *nursing facility provider* fund shall
15 be transferred to or otherwise revert to the state general fund at any time.
16 Notwithstanding the provisions of any other law to the contrary, if any
17 moneys credited to the quality care *nursing facility provider* fund are
18 transferred or otherwise revert to the state general fund, 30 days following
19 the transfer or reversion, the quality care *nursing facility provider*
20 assessment shall terminate, and the secretary of health and environment
21 *for aging and disability services* shall discontinue the imposition,
22 assessment and collection of the assessment. Upon termination of the
23 assessment, all collected assessment revenues, including the moneys
24 inappropriately transferred or reverting to the state general fund, less any
25 amounts expended by the secretary of health and environment *for aging*
26 *and disability services*, shall be returned on a pro rata basis to skilled
27 nursing care facilities that paid the assessment.

28 (3) Any moneys received by the state of Kansas from the federal
29 government as a result of federal financial participation in the state
30 medicaid program that are derived from the quality care *nursing facility*
31 *provider* assessment shall be deposited in the quality care *nursing facility*
32 *provider* fund and used to finance actions to maintain or increase
33 healthcare in skilled nursing care facilities.

34 (4) Moneys in the fund shall be used exclusively for the following
35 purposes:

36 (A) To pay administrative expenses incurred by the secretary of
37 health and environment or the agent in performing the activities authorized
38 by this section, except that such expenses shall not exceed a total of 1% of
39 the aggregate assessment funds collected pursuant to subsection (b) for the
40 prior fiscal year;

41 (B) to increase nursing facility payments to fund covered services to
42 medicaid beneficiaries within medicare upper payment limits, as may be
43 negotiated;

1 ~~(C) to reimburse the medicaid share of the quality care *nursing-*~~
2 ~~*facility provider* assessment as a pass-through medicaid allowable cost;~~

3 ~~(D) to restore the medicaid rate reductions implemented on January 1,~~
4 ~~2010;~~

5 ~~(E) to restore funding for fiscal year 2010, including rebasing and~~
6 ~~inflation to be applied to rates in fiscal year 2011; and~~

7 ~~(F) the remaining amount, if any, shall be expended first to increase~~
8 ~~the direct health care costs center limitation up to 150% of the case mix~~
9 ~~adjusted median, and then, if there are remaining amounts, for other~~
10 ~~quality care *nursing facility provider* enhancement of skilled nursing care~~
11 ~~facilities as approved by the quality care *nursing facility provider-*~~
12 ~~improvement panel but shall not be used directly or indirectly to replace~~
13 ~~existing state expenditures for payments to skilled nursing care facilities~~
14 ~~for providing services pursuant to the state medicaid program.~~

15 ~~(5) Any moneys received by a skilled nursing care facility from the~~
16 ~~quality care *nursing facility provider* fund shall not be expended by any~~
17 ~~skilled nursing care facility to provide for bonuses or profit-sharing for any~~
18 ~~officer, employee or parent corporation but may be used to pay to~~
19 ~~employees who are providing direct care to a resident of such facility.~~

20 ~~(6) Adjustment payments may be paid quarterly or within the daily~~
21 ~~medicaid rate to reimburse covered medicaid expenditures in the aggregate~~
22 ~~within the upper payment limits.~~

23 ~~(7) On or before the 10th day of each month, the director of accounts~~
24 ~~and reports shall transfer from the state general fund to the quality care~~
25 ~~*nursing facility provider* fund interest earnings based on:~~

26 ~~(A) The average daily balance of moneys in the quality care *nursing-*~~
27 ~~*facility provider* fund for the preceding month; and~~

28 ~~(B) the net earnings rate of the pooled money investment portfolio for~~
29 ~~the preceding month.~~

30 ~~(e) If a skilled nursing care facility fails to pay the full amount of the~~
31 ~~quality care *nursing facility provider* assessment imposed pursuant to~~
32 ~~subsection (b), when due and payable, including any extensions of time~~
33 ~~granted under that subsection, the secretary of health and environment~~
34 ~~shall assess a penalty in the amount of the lesser of \$500 per day or 2% of~~
35 ~~the quality care *nursing facility provider* assessment owed for each day the~~
36 ~~assessment is delinquent. The secretary of health and environment is~~
37 ~~authorized to establish delayed payment schedules for skilled nursing care~~
38 ~~facilities that are unable to make installment payments when due under~~
39 ~~this section because of financial difficulties, as determined by the secretary~~
40 ~~of health and environment.~~

41 ~~(f) (1) The secretary of health and environment shall assess and~~
42 ~~collect quality care *nursing facility provider* assessments imposed pursuant~~
43 ~~to subsection (b), including any penalty assessments imposed thereon~~

1 pursuant to subsection (c), from skilled nursing care facilities on and after
2 July 1, 2010, except that no assessments or penalties shall be assessed
3 under subsections (a) through (h) until:

4 (A) An amendment to the state plan for medicaid that increases the
5 rates of payments made to skilled nursing care facilities for providing
6 services pursuant to the federal medicaid program and that is proposed for
7 approval for purposes of subsections (a) through (h) is approved by the
8 federal government, in which case the initial assessment is due not earlier
9 than 60 days after state plan approval; and

10 (B) the skilled nursing care facilities have been compensated
11 retroactively within 60 days after state plan approval at the increased rate
12 for services provided pursuant to the federal medicaid program for the
13 period commencing on and after July 1, 2010.

14 (2) The secretary of health and environment shall implement and
15 administer the provisions of subsections (a) through (h) in a manner
16 consistent with applicable federal medicaid laws and regulations. The
17 secretary of health and environment shall seek any necessary approvals by
18 the federal government that are required for the implementation of
19 subsections (a) through (h):

20 (3) The provisions of subsections (a) through (h) shall be null and
21 void and shall have no force and effect if one of the following occur:

22 (A) The medicaid plan amendment that increases the rates of
23 payments made to skilled nursing care facilities for providing services
24 pursuant to the federal medicaid program and that is proposed for approval
25 for purposes of subsections (a) through (h) is not approved by the United
26 States centers for medicare and medicaid services;

27 (B) the rates of payments made to skilled nursing care facilities for
28 providing services pursuant to the federal medicaid program are reduced
29 below the rates calculated on December 31, 2009, increased by revenues in
30 the quality care nursing facility provider fund and matched by federal
31 financial participation and rebasing as provided for in K.S.A. 75-5958, and
32 amendments thereto;

33 (C) any funds are utilized to supplant funding for skilled nursing care
34 facilities as required by subsection (g);

35 (D) any funds are diverted from those purposes set forth in subsection
36 (d)(4); or

37 (E) upon the governor signing, or allowing to become law without
38 signature, legislation that, by proviso or otherwise, directs any funds from
39 those purposes set forth in subsection (d)(4) or that would propose to
40 suspend the operation of this section.

41 (g) On and after July 1, 2010, reimbursement rates for skilled nursing
42 care facilities shall be restored to those in effect during December 2009.
43 No funds generated by the assessments or federal funds generated

1 therefrom shall be utilized for such restoration, but *except that* such funds
2 may be used to restore the rate reduction in effect from January 1, 2010, to
3 *through* June 30, 2010.

4 ~~(h) Rates of reimbursement shall not be limited by private pay~~
5 ~~charges.~~

6 ~~(i) If the provisions of subsections (a) through (h) are repealed, expire~~
7 ~~or become null and void and have no further force and effect, all moneys~~
8 ~~in the quality care *nursing facility provider* fund that were paid under the~~
9 ~~provisions of subsections (a) through (h) shall be returned to the skilled~~
10 ~~nursing care facilities that paid such moneys on the basis on which such~~
11 ~~payments were assessed and paid pursuant to subsections (a) through (h).~~

12 ~~(j) The department of health and environment may adopt rules and~~
13 ~~regulations necessary to implement the provisions of this section.~~

14 ~~(k) For purposes of administering and selecting the reimbursements~~
15 ~~of moneys in the quality care *nursing facility provider* assessment fund,~~
16 ~~the quality care *nursing facility provider* improvement panel is hereby~~
17 ~~established. The panel shall consist of the following members: Two~~
18 ~~persons appointed by leadingage Kansas; two persons appointed by the~~
19 ~~Kansas health care association; one person appointed by Kansas advocates~~
20 ~~for better care; one person appointed by the Kansas hospital association;~~
21 ~~one person appointed by the governor who is a member of the Kansas~~
22 ~~adult care executives association; one person appointed by the governor~~
23 ~~who is a skilled nursing care facility resident or the family member of such~~
24 ~~a resident; one person appointed by the Kansas foundation for medical~~
25 ~~care; one person appointed by the governor from the department for aging~~
26 ~~and disability services; one person appointed by the governor from the~~
27 ~~department of health and environment; one person appointed by the~~
28 ~~president of the senate who is affiliated with an organization representing~~
29 ~~and advocating the interests of retired persons in Kansas; and one person~~
30 ~~appointed by the speaker of the house of representatives who is a volunteer~~
31 ~~with the office of the state long-term care ombudsman established by the~~
32 ~~long-term care ombudsman act. The person appointed by the governor~~
33 ~~from the department for aging and disability services and the person~~
34 ~~appointed by the governor from the department of health and environment~~
35 ~~shall be nonvoting members of the panel. The panel shall meet as soon as~~
36 ~~possible subsequent to the effective date of this act and shall elect a~~
37 ~~chairperson from among the members appointed by the trade organizations~~
38 ~~specified in this subsection. The members of the quality care *nursing*~~
39 ~~*facility provider* improvement panel shall serve without compensation or~~
40 ~~expenses. The quality care *nursing facility provider* improvement panel~~
41 ~~shall report annually on or before January 10 to the senate committees on~~
42 ~~public health and welfare and ways and means, the house committees on~~
43 ~~appropriations and health and human services and the Robert G. (Bob)~~

1 ~~Bethell joint committee on home and community based services and~~
2 ~~KanCare oversight concerning the progress to reduce the incidence of~~
3 ~~antipsychotic drug use in elders with dementia, participation in the nursing~~
4 ~~facility quality and efficiency outcome incentive factor, participation in the~~
5 ~~culture change and person-centered care incentive program, annual~~
6 ~~resident satisfaction ratings for Kansas skilled nursing care facilities and~~
7 ~~the activities of the panel during the preceding calendar year and any~~
8 ~~recommendations that the panel may have concerning the administration~~
9 ~~of and expenditures from the quality care *nursing facility provider*~~
10 ~~assessment fund.~~

11 ~~(f)~~ The provisions of this section shall expire on July 1, 2030.

12 ~~Sec. 9.~~ K.S.A. 39-923, 40-2231, 40-2232, 40-2233, 40-2234, 40-
13 2235 and 40-2238 and K.S.A. 2023 Supp. 39-936 and 75-7435 are hereby
14 repealed.

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