

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2619

As Recommended by House Committee on
Aging and Long-term Care

Brief*

HB 2619 would amend statutes concerning the licensure of adult care homes. The definition of an intermediate care facility for the mentally retarded (ICF/MR) would be amended and "Medicaid program" would be defined. The bill would require a two-year waiting period to apply for a new license or for reinstatement of a license to operate an adult care home if a licensing agency finds substantial failure to comply with established requirements, standards or rules and regulations, or if a receiver has been appointed. The bill would provide two exceptions to the two-year waiting period if specific conditions are met.

Adult Care Home Definition

The bill would amend the definition of an ICF/MR to apply to facilities which provide care for four or more individuals. The current definition applies to facilities caring for six or more individuals. The definition change would clarify the authority of the Kansas Department on Aging (KDOA) to license facilities which were licensed years ago as ICF/MRs but did not meet the definition of an ICF/MR, as a result of having fewer than the required six or more individuals for which care was provided. The bill would prohibit the operation of an ICF/MR of five beds or less unless, on or before January 1, 2012, the facility was issued a license by the licensing agency or participated in the Medicaid program as an ICF/MR of five beds or less. The amendment would

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

grandfather in the smaller ICF/MR facilities licensed on or before January 1, 2012.

Medicaid Program Definition

Under the bill, the Medicaid Program would be defined as "the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder."

Waiting Period for Application

The bill would provide when the licensing agency finds the adult care facility has substantially failed to comply with requirements, standards, or rules and regulations in the Adult Care Home Licensure Act, or a receiver has been appointed, the licensing agency would be required to make an order denying, suspending, or revoking the license. The applicant or licensee whose license has been denied, suspended, or revoked would not be eligible to apply for a new license for a period of two years from the date the license was denied, suspended, or revoked.

Two exceptions would be available under the bill to waive the two year waiting period to apply for a new license or license reinstatement for a licensee or applicant whose license has been denied, revoked, or suspended. The waiting period would be waived and the following individuals may apply at any time for a new license or license reinstatement by submitting a written waiver of rights under the Kansas Administrative Procedure Act and the Kansas Judicial Review Act to the licensing agency in a settlement agreement, or other manner approved by the licensing agency:

- A licensee or applicant who is issued an emergency order by the licensing agency denying, revoking, or suspending a license; and

- A licensee who is issued a notice of intent to take disciplinary action by the licensing agency.

Denial, Revocation, or Suspension of License

The bill would add the following as reasons for which the licensing agency may deny a license or suspend or revoke a license to operate an adult care home:

- The licensing authority of another state, territory, District of Columbia, or other county has denied, suspended, revoked, or limited a license, has censured or taken other disciplinary action, or has denied an application for licensure. A certified copy of the record of such action would be conclusive evidence of these actions; or
- The individual has failed or refused to comply with Medicaid requirements or regulations, as evidenced by a certified copy of the record of such action; or
- The individual has failed or refused to comply with Medicare requirements or regulations, as evidenced by a certified copy of the record of such action.

Background

The bill was introduced at the request of the Kansas Department on Aging. The House Committee on Aging and Long-term Care heard testimony in favor of the bill from the Commissioner of Survey and Certification for the KDOA. The Commissioner stated by amending the licensing statute to define an ICF/MR to those caring for four or more individuals (a change from the existing requirement of six or more individuals), KDOA could continue licensing facilities licensed many years ago which did not meet licensing requirements at the time of initial licensure. The Commissioner noted the bill

clarified situations in which an applicant would not be viewed as being "fit and qualified" to be issued a license. The Commissioner further stated it was the Secretary of Aging's belief that revoking or suspending a license for cause should require the owner to refrain from operating a new facility for at least two years, even if the revocation occurred in another state, as this bill provides. No opposing or neutral testimony was presented to the House Committee.

The fiscal note prepared by the Division of the Budget states that the Department on Aging indicates passage of the bill would have no fiscal effect.