

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2004

As Recommended by House Committee on
Children and Seniors

Brief*

HB 2004 would add law to the Adult Care Home Licensure Act (Act) allowing a resident of an adult residential care facility (facility) to appeal a pending involuntary transfer or discharge to the Secretary for Aging and Disability Services (Secretary) and providing for notification procedures and conditions for transfer or discharge.

Conditions for Transfer or Discharge

The bill would define “adult residential care facility” to mean an assisted living facility, a residential health care facility, home plus, or a boarding care home, as defined in the Act.

The bill would require an administrator or operator of a facility to ensure that a resident is not transferred or discharged unless one or more of the following conditions are met:

- The transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met by the facility;
- The health or safety of other individuals in the facility is endangered;

*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>

- The resident has failed, after reasonable and appropriate notice, to pay the rates and charges imposed by the facility; or
- The facility ceases to operate.

Notification and Documentation

The bill would require the administrator or operator, before transferring or discharging a resident, to notify the resident, and, if known, a legal representative or designated family member, of the transfer or discharge and the reason for the transfer or discharge.

The bill also would require the administrator or operator, before involuntarily transferring or discharging a resident, to record and substantiate documentation by a physician in the resident's clinical records for transfer or discharge, if the reason for transfer is one of the above-described conditions, excepting a facility's cessation of operations, and if transfer or discharge is:

- Necessary for the resident's welfare and the resident's needs cannot be met by the facility;
- Appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; or
- Necessary because the health or safety of other individuals in the adult resident care facility is endangered.

The bill also would require the administrator or operator, before transferring or discharging a resident, to provide a written transfer or discharge notice that must include the following:

- The reason for the transfer or discharge;

- The effective date of the transfer or discharge;
- The contact information for the State Long-Term Care Ombudsman;
- The resident's right to appeal an involuntary transfer or discharge and information as designated by the Secretary to assist the resident in exercising such right;
- The contact information of the agency responsible for the protection and advocacy of individuals with such conditions for a resident with an intellectual and developmental disability, dementia, or other cognitive-limiting condition; and
- The contact information of the agency responsible for protection and advocacy of individuals with a mental disorder or related disability for a resident with such disorder or disability.

The bill would require the administrator or operator, or such person's designee, to provide the notice of transfer or discharge to the resident or the resident's legal representative, at least 30 days in advance of the resident's transfer or discharge, unless:

- The safety of other individuals in the facility would be endangered; or
- The resident's urgent medical needs require an immediate transfer to another health care facility.

The bill would require the administrator or operator, or such person's designee, to provide sufficient preparation and orientation to each resident before a resident's discharge, including development of a discharge plan, with involvement of the resident, the resident's legal representative, and designated family, if practicable.

Appeals Process

The bill would allow a resident or such resident's legal representative, if such resident of a facility receives notice of a pending involuntary transfer or discharge, to appeal a transfer or discharge to the Secretary by filing a notice of appeal in the Office of Administrative Hearings (OAH) within 15 days of the date of such notice. The bill would require a presiding officer from the OAH to hold a hearing, in accordance with the provisions of the Kansas Administrative Procedure Act, within 30 days after the receipt of the notice of appeal. The bill would allow a resident who files an appeal to return and resume residence in the facility while the appeal is pending.

The bill would require the Secretary to adopt rules and regulations as necessary to implement and administer the provisions of the bill.

Background

The bill was introduced by Representative Highland at the request of a private citizen.

House Committee on Children and Seniors

In the House Committee hearing on January 28, 2021, Representative Highland, two private citizens, and representatives of the Disability Rights Center of Kansas, Kansas Advocates for Better Care, Kansas Alzheimer's Association, and Office of the State Long-Term Care Ombudsman provided **proponent** testimony. Proponents stated the bill would afford residents additional protections by allowing residents at state-licensed-only facilities to file an appeal. Under current law, only residents at federally licensed skilled nursing facilities have a right to appeal. Proponents noted the bill would be commonly called "Charlie's Law," in

honor of the husband of the private citizen who requested the bill.

Written-only proponent testimony was provided by representatives of the Kansas State Nurses Association and Kansas Trial Lawyers Association.

Representatives of LeadingAge Kansas, Kansas Adult Care Executives, and Kansas Health Care Association and Kansas Center for Assisted Living provided **opponent** testimony. Opponents stated a lengthy appeals process could be dangerous for the residents if the facility is not able to properly meet their needs.

No other testimony was provided.

Fiscal Information

According to the January 2021 fiscal note prepared by the Division of the Budget on the bill, the Kansas Department for Aging and Disability Services (KDADS) indicates enactment of the bill would increase expenditures by \$419,490 from the State General Fund for salaries to fill an additional 2.00 full-time equivalent (FTE) attorney positions, 1.0 FTE legal assistant position, and for contractual services with the OAH. KDADS states the need for the added positions are a result of the agency being included in disputes between residents and facilities. The agency estimates there would be a large increase in the number of appeals over existing numbers, which are currently between 10 and 15 appeals per month.

The OAH indicates enactment of the bill would increase off-budget expenditures for salaries and wages for an additional 1.00 administrative law judge FTE position and an additional 1.00 legal assistant FTE position. Contractual services also would increase. Expenditures would be offset by KDADS payments to OAH for administrative hearing services. The OAH notes its current office is not large enough

to accommodate the two additional employees. The estimate for contractual services does not include the cost of leasing additional office space. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Adult Care Home Licensure Act; adult residential care facility; administrative hearing; involuntary transfer or discharge