

HOUSE BILL No. 2348

By Committee on Children and Seniors

2-14

1 AN ACT concerning the adult care home licensure act; relating to adult
2 care home requirements, admissions and penalties; licensed and
3 unlicensed employees; amending K.S.A. 39-953b and K.S.A. 2012
4 Supp. 39-936, 39-946 and 39-953a and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2012 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) (1) A qualified person or persons shall be in attendance at all
19 times upon residents receiving accommodation, board, care, training or
20 treatment in adult care homes. The licensing agency may establish
21 necessary standards and rules and regulations prescribing the number,
22 qualifications, training, standards of conduct and integrity for such
23 qualified person or persons attendant upon the residents.

24 (2) *An adult care home shall conspicuously post for each wing and*
25 *shift the current number of licensed and unlicensed nursing personnel*
26 *directly responsible for resident care and current ratios of residents to*
27 *licensed and unlicensed nursing personnel. Such information shall be*
28 *displayed on a form approved by the secretary for aging and disability*
29 *services. For the purposes of this subsection, "licensed nursing personnel"*
30 *means registered professional nurses and licensed practical nurses and*
31 *"unlicensed nursing personnel" means nurse aides, nurse aide trainees,*
32 *medication aides and paid nutrition assistants.*

33 (c) (1) The licensing agency shall require unlicensed employees of an
34 adult care home, except an adult care home licensed for the provision of
35 services to people with intellectual disability which has been granted an
36 exception by the secretary of aging upon a finding by the licensing agency

1 that an appropriate training program for unlicensed employees is in place
2 for such adult care home, employed on and after ~~the effective date of this~~
3 ~~act January 1, 2014~~, who provide direct, individual care to residents and
4 who do not administer medications to residents ~~and who have not~~
5 ~~completed a course of education and training relating to resident care and~~
6 ~~treatment approved by the secretary of health and environment or are not~~
7 ~~participating in such a course on the effective date of this act to shall~~
8 complete successfully ~~40~~ 90 hours of *education and training* in basic
9 resident care *skills and treatment approved by the secretary of health and*
10 *environment*. Any unlicensed person who has not completed ~~40~~ 90 hours
11 of ~~training~~ *education* relating to resident care and treatment approved by
12 the secretary of health and environment shall not provide direct, individual
13 care to residents. The ~~40~~ 90 hours of training shall be supervised by a
14 registered professional nurse and the content and administration thereof
15 shall comply with rules and regulations adopted by the secretary of health
16 and environment. The ~~40~~ 90 hours of training may be prepared and
17 administered by an adult care home or by any other qualified person and
18 may be conducted on the premises of the adult care home. The ~~40~~ 90 hours
19 of training required in this section shall be a part of any course of
20 education and training required by the secretary of health and environment
21 under subsection (c)(2). Training for paid nutrition assistants shall consist
22 of at least ~~eight~~ 12 hours of instruction, at a minimum, which meets the
23 requirements of 42 C.F.R. § 483.160.

24 (2) The licensing agency may require unlicensed employees of an
25 adult care home, except an adult care home licensed for the provision of
26 services to people with intellectual disability which has been granted an
27 exception by the secretary of health and environment upon a finding by the
28 licensing agency that an appropriate training program for unlicensed
29 employees is in place for such adult care home, who provide direct,
30 individual care to residents and who do not administer medications to
31 residents and who do not meet the definition of paid nutrition ~~assistant~~
32 *assistant* under paragraph (a)(27) of K.S.A. 39-923, and amendments
33 thereto, after ~~90~~ 60 days of employment to successfully complete an
34 approved course of instruction and an examination relating to resident care
35 and treatment as a condition to continued employment by an adult care
36 home. A course of instruction may be prepared and administered by any
37 adult care home or by any other qualified person. A course of instruction
38 prepared and administered by an adult care home may be conducted on the
39 premises of the adult care home which prepared and which will administer
40 the course of instruction. The licensing agency shall not require unlicensed
41 employees of an adult care home who provide direct, individual care to
42 residents and who do not administer medications to residents to enroll in
43 any particular approved course of instruction as a condition to the taking

1 of an examination, but the secretary of health and environment shall
2 prepare guidelines for the preparation and administration of courses of
3 instruction and shall approve or disapprove courses of instruction.
4 Unlicensed employees of adult care homes who provide direct, individual
5 care to residents and who do not administer medications to residents may
6 enroll in any approved course of instruction and upon completion of the
7 approved course of instruction shall be eligible to take an examination.
8 The examination shall be prescribed by the secretary of health and
9 environment, shall be reasonably related to the duties performed by
10 unlicensed employees of adult care homes who provide direct, individual
11 care to residents and who do not administer medications to residents and
12 shall be the same examination given by the secretary of health and
13 environment to all unlicensed employees of adult care homes who provide
14 direct, individual care to residents and who do not administer medications.

15 (3) The secretary of health and environment shall fix, charge and
16 collect a fee to cover all or any part of the costs of the licensing agency
17 under this subsection (c). The fee shall be fixed by rules and regulations of
18 the secretary of health and environment. The fee shall be remitted to the
19 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
20 amendments thereto. Upon receipt of each such remittance, the state
21 treasurer shall deposit the entire amount in the state treasury to the credit
22 of the state general fund.

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

28 (5) No adult care home shall use an individual as an unlicensed
29 employee of the adult care home who provides direct, individual care to
30 residents and who does not administer medications unless the facility has
31 inquired of the state registry as to information contained in the registry
32 concerning the individual.

33 (6) Beginning July 1, ~~1993~~ 2013, the adult care home must require
34 any unlicensed employee of the adult care home who provides direct,
35 individual care to residents and who does not administer medications and
36 who since passing the examination required under paragraph (2) of this
37 subsection has had a continuous period of ~~24~~ 18 consecutive months
38 during none of which the unlicensed employee provided direct, individual
39 care to residents to complete an approved refresher course. The secretary
40 of health and environment shall prepare guidelines for the preparation and
41 administration of refresher courses and shall approve or disapprove
42 courses.

43 (d) Any person who has been employed as an unlicensed employee of

1 an adult care home in another state may be so employed in this state
2 without an examination if the secretary of health and environment
3 determines that such other state requires training or examination, or both,
4 for such employees at least equal to that required by this state.

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

8 (f) No adult care home shall require as a condition of admission to or
9 as a condition to continued residence in the adult care home that a person
10 change from a supplier of medication needs of their choice to a supplier of
11 medication selected by the adult care home. Nothing in this subsection (f)
12 shall be construed to abrogate or affect any agreements entered into prior
13 to the effective date of this act between the adult care home and any person
14 seeking admission to or resident of the adult care home.

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

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

24 Sec. 2. K.S.A. 2012 Supp. 39-946 is hereby amended to read as
25 follows: 39-946. (a) If upon reinspection by the state fire marshal or the
26 marshal's representative or a duly authorized representative of the
27 secretary of aging, which reinspection shall be conducted within 14 days
28 from the day the correction order is served upon the licensee, it is found
29 that the licensee of the adult care home which was issued a correction
30 order has not corrected the deficiency or deficiencies specified in the
31 order, the secretary of aging may assess a civil penalty in an amount not to
32 exceed \$500 per day per deficiency against the licensee of an adult care
33 home for each day subsequent to the day following the time allowed for
34 correction of the deficiency as specified in the correction order that the
35 adult care home has not corrected the deficiency or deficiencies listed in
36 the correction order, but the maximum assessment shall not exceed ~~\$2,500~~
37 ~~\$3,000~~. A written notice of assessment shall be served upon the licensee of
38 an adult care home either personally or by certified mail, return receipt
39 requested.

40 (b) Before the assessment of a civil penalty, the secretary of aging
41 shall consider the following factors in determining the amount of the civil
42 penalty to be assessed: (1) The severity of the violation; (2) the good faith
43 effort exercised by the adult care home to correct the violation; and (3) the

1 history of compliance of the ownership of the adult care home with the
2 rules and regulations. If the secretary of aging finds that some or all
3 deficiencies cited in the correction order have also been cited against the
4 adult care home as a result of any inspection or investigation which
5 occurred within 18 months prior to the inspection or investigation which
6 resulted in such correction order, the secretary of aging may double the
7 civil penalty assessed against the licensee of the adult care home, the
8 maximum not to exceed ~~\$5,000~~ \$6,000.

9 (c) All civil penalties assessed shall be due and payable within 10
10 days after written notice of assessment is served on the licensee, unless a
11 longer period of time is granted by the secretary. If a civil penalty is not
12 paid within the applicable time period, the secretary of aging may file a
13 certified copy of the notice of assessment with the clerk of the district
14 court in the county where the adult care home is located. The notice of
15 assessment shall be enforced in the same manner as a judgment of the
16 district court.

17 Sec. 3. K.S.A. 2012 Supp. 39-953a is hereby amended to read as
18 follows: 39-953a. (a) At any time the secretary of aging initiates any action
19 concerning an adult care home in which it is alleged that there has been a
20 substantial failure to comply with the requirements, standards or rules and
21 regulations established under the adult care home licensure act, that
22 conditions exist in the adult care home which are life threatening or
23 endangering to the residents of the adult care home, that the adult care
24 home is insolvent, or that the adult care home has deficiencies which
25 significantly and adversely affect the health, safety, nutrition or sanitation
26 of the adult care home residents, the secretary of aging ~~may~~ shall issue an
27 order, pursuant to the emergency proceedings provided for under the
28 Kansas administrative procedure act, prohibiting any new admissions into
29 the adult care home until further determination by the secretary of aging.
30 This remedy granted to the secretary of aging is in addition to any other
31 statutory authority the secretary of aging has relating to the licensure and
32 operation of adult care homes and is not be construed to limit any of the
33 powers and duties of the secretary of aging under the adult care home
34 licensure act.

35 (b) This section shall be part of and supplemental to the adult care
36 home licensure act.

37 Sec. 4. K.S.A. 39-953b is hereby amended to read as follows: 39-
38 953b. (a) The secretary shall issue annually to each adult care home a
39 report summarizing by category of licensure, violation and frequency of
40 occurrence those violations which have resulted in the issuance of
41 correction orders and civil penalties within the preceding twelve-month
42 period.

43 (b) *The secretary shall report annually to the committee on children*

1 *and seniors and the social services budget committee of the house of*
2 *representatives, and the committee on public health and welfare and the*
3 *committee on ways and means of the senate, an assessment of whether the*
4 *minimum nursing care hours established pursuant to section 5, and*
5 *amendments thereto, are sufficient to meet residents' needs. If the*
6 *secretary finds that such minimum nursing care hours are insufficient to*
7 *meet the needs of residents, the secretary shall include in the annual*
8 *report required by this subsection any recommendations to adjust*
9 *minimum nursing care hours to sufficiently meet residents' needs.*

10 (c) This section shall be part of and supplemental to the adult care
11 home licensure act.

12 New Sec. 5. (a) As used in this section:

13 (1) "Nurse aide personnel" means nurse aides, nurse aide trainees,
14 medication aides or paid nutrition assistants.

15 (2) "Qualified nursing personnel" means:

16 (A) Registered professional nurses or licensed practical nurses;

17 (B) nurse aides, nurse aide trainees or medication aides; and

18 (C) paid nutrition assistants.

19 (3) "Resident day" means a period of service rendered to a resident
20 between census-taking hours on two successive days and all other days in
21 an adult care home. Census-taking hours shall consist of 24 hours
22 beginning at midnight.

23 (b)(1) The minimum nursing care hours provided in this section apply
24 to all residents residing within an adult care home, regardless of payment
25 source.

26 (2) On and after July 1, 2013, the required hours of qualified nursing
27 personnel per resident day in nursing facilities shall be at least 2 hours and
28 50 minutes, of which at least 40 minutes shall be allocated to registered
29 professional nurse time, at least 27 minutes shall be allocated to licensed
30 practical nurse time, and at least one hour and 43 minutes shall be
31 allocated to nurse aide personnel time;

32 (3) on and after July 1, 2014, the required hours of qualified nursing
33 personnel per resident day in nursing facilities shall be at least 3 hours and
34 39 minutes, of which at least 51 minutes shall be allocated to registered
35 professional nurse time, at least 35 minutes shall be allocated to licensed
36 practical nurse time, and at least two hours and 13 minutes shall be
37 allocated to nurse aide personnel time; and

38 (4) on and after July 1, 2015, the required hours of qualified nursing
39 personnel per resident day in nursing facilities shall be at least 4 hours and
40 26 minutes, of which at least 62 minutes shall be allocated to registered
41 professional nurse time, at least 42 minutes shall be allocated to licensed
42 practical nurse time, and at least two hours and 42 minutes shall be
43 allocated to nurse aide personnel time.

1 (c) (1) For nursing facilities of 60 residents or less, registered
2 professional nurse time may include the director of nursing;

3 (2) for nursing facilities of 61 residents or more, registered
4 professional nurse time shall not include the director of nursing; and

5 (3) for nursing facilities of 101 residents or more, registered
6 professional nurse time shall not include the director of nursing or the
7 assistant director of nursing.

8 (d) Except as otherwise provided in subsections (b) and (c), nothing
9 in this section shall be interpreted to change existing standards, rules or
10 regulations established by the secretary for aging and disability services
11 pursuant to K.S.A. 39-936, and amendments thereto.

12 (e) This section shall be part of and supplemental to the adult care
13 home licensure act.

14 Sec. 6. K.S.A. 39-953b and K.S.A. 2012 Supp. 39-936, 39-946 and
15 39-953 are hereby repealed.

16 Sec. 7. This act shall take effect and be in force from and after its
17 publication in the statute book.