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Kansas Legislator Briefing Book 2016

Health

L-1 Creation of Operator Registration Act and Changes in Adult Care Home Licensure Act

The Adult Care Home Licensure Act (KSA 39-923 *et seq.*) was created to develop, establish, and enforce standards for the care, treatment, health, safety, welfare, and comfort of individuals in adult care homes licensed by the Secretary for Aging and Disability Services; and for the construction, general hygiene, maintenance, and operation of adult care homes to promote safe and adequate accommodation, care, and treatment of individuals in adult care homes (KSA 2015 Supp. 39-924). Under the Act, “adult care home” means any nursing facility, nursing facility for mental health, intermediate care facility for persons with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility.

During the 2014 Session, the Operator Registration Act was enacted by the passage of HB 2418, effective July 1, 2014, and is found at KSA 2015 Supp. 39-973 through 39-980. The bill creating the Operator Registration Act was filed as 2014 HB 2717, but its contents were inserted in HB 2418.

The purpose stated by the Kansas Department for Aging and Disability Services (KDADS) for the creation of the Operator Registration Act was to require operators to be registered so the State could set reasonable requirements to assure operators remained current with the knowledge and standards of practice necessary to effectively operate the adult care homes. By requiring registration of operators, KDADS may take disciplinary actions to protect adult care home residents from operators who have been found to have abused, neglected, or exploited a resident in an adult care home, or have committed crimes rendering them unfit for the role of an operator. Others conferees testifying on HB 2717 indicated the bill would strengthen consumer protection by adding education and accountability for operators in the state.

Adult Care Home Licensure Act Changes

The Adult Care Home Licensure Act was amended by 2014 HB 2418 to update state agency references in accordance with 2012 Executive Reorganization Order No. 41 that moved the operations of the Health Occupations Credentialing (HOC) unit from the Kansas Department for Health and Environment (KDHE) to KDADS, to amend two definitions, to remove an outdated rule and regulation reference, and provide for the

KDHE regulations administered by the HOC unit to be transferred to KDADS.

HB 2418 amended the definition of “operator” in the Adult Care Home Licensure Act to mean an individual registered pursuant to the Operator Registration Act, who may be appointed by a licensee to have the authority and responsibility to oversee an assisted living facility or residential health care facility with fewer than 61 residents, a home-plus, or an adult day care facility. The bill also amended “licensee” to mean any person or persons acting jointly or severally who are licensed by the Secretary for Aging and Disability Services pursuant to the Adult Care Home Licensure Act.

The 2015 Legislature passed HB 2043 to exclude from the statutory definition of the term “adult care home” any center approved by the Centers for Medicare and Medicaid Services (CMS) as a Program for All-Inclusive Care for the Elderly (PACE), which provides services only to PACE participants. This exempts PACE programs from the Adult Care Home Licensure Act.

Proponents of HB 2043 stated the exemption would assist in the expansion of PACE programs in new regions, streamline the process for developing new PACE centers in Kansas by removing the requirement that landlords who lease to PACE programs be co-holders of licenses (resulting in extending liability for adult care home operations to the landlords), and reduce duplications in the state inspection process.

Additionally, the passage of 2015 SB 113 amended the Adult Care Home Licensure Act to prohibit a person from knowingly operating an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of mistreatment of an elder person, human trafficking, aggravated human trafficking, commercial exploitation of a child, or an attempt, conspiracy, or solicitation to commit any of these crimes.

Operator Registration Act

On or after July 1, 2014, an adult care home cannot be operated without the supervision of an operator who is registered under the Operator Registration Act (Act) or a licensed adult care home administrator under the Adult Care Home Licensure Act. Persons representing themselves as operators who are not registered under the Act are guilty of a class C misdemeanor. The Act defines an “operator,” “adult care home,” and “licensee” as these terms are defined in the Adult Care Home Licensure Act.

The Secretary for Aging and Disability Services (Secretary) is required to adopt, by rules and regulations, a system for registering operators. Rules and regulations, at a minimum, need to require that an applicant seeking registration as an operator meet the following qualifications:

- Be at least 21 years of age;
- Possess:
 - A high school diploma or equivalent, with one year relevant experience as determined by the Secretary;
 - An associate’s degree in a relevant field as determined by the Secretary; or
 - A bachelor’s degree;
- Successfully complete a course approved by the Secretary on the principles of assisted living;
- Pass an examination approved by the Secretary on the principles of assisted living and any other requirements established by the Secretary by rules and regulations;
- File an application; and
- Pay the required application fee.

For applications made within two years of July 1, 2014, the Secretary may waive the education, experience, and application fee requirements and grant registration as an operator to an applicant who completes the operator course approved by the Secretary and passes an examination approved by the Secretary prior to July 1, 2014. However, individuals meeting these requirements who do not apply for registration as an operator

within two years of July 1, 2014, are considered to have a lapsed registration for failure to renew.

The Secretary is to adopt rules and regulations to address the renewal of valid registrations, renewal fees, continuing education requirements, late fees for renewals submitted within 30 days after the expiration date, the requirements for reinstatement of individuals whose registration has lapsed due to submitting a renewal application after the 30-day period following the date of expiration, and the expiration dates for registrations issued or renewed.

Registrations are renewable biennially by filing a renewal application prior to the expiration of an existing registration and upon payment of the renewal fee, except as otherwise provided. A registration is issued by KDADS to an applicant when all registration requirements are met.

To allow for a system of biennial registration, the Secretary is authorized to provide, by rules and regulations, that registrations issued or renewed for the first time after July 1, 2014, may expire less than two years from the date of issuance or renewal. The Secretary is required to prorate to the nearest whole month the registration or renewal fee set by rules and regulations. Delinquent registration renewals are not prorated. All fees are to be credited to the State Licensure Fee Fund administered by KDADS.

The Secretary may deny, refuse to renew, suspend or revoke a registration if the operator or applicant has committed any of the following:

- Has obtained, or attempted to obtain, a registration by means of fraud,

misrepresentation, or concealment of material facts;

- Has a finding of abuse, neglect, or exploitation against a resident of an adult care home;
- Has been convicted of a crime found by the Secretary to have direct bearing on whether the registrant or applicant can be trusted to serve the public in the position of an operator;
- Has violated a lawful order, rule, or regulation of the Secretary;
- Has had disciplinary action taken against the operator on a professional or occupational healthcare credential issued by Kansas or another jurisdiction; or
- Has violated any provisions of the Act.

The Secretary is authorized to order a denial, refusal to renew, suspension, or revocation of a registration based on any of the above conditions after notice and hearing on the matter according to the provisions of the Kansas Administrative Procedure Act.

A person whose registration has been revoked is allowed to apply for reinstatement. Acceptance or rejection of an application for reinstatement is at the Secretary's discretion, and a hearing is allowed to consider the reinstatement. An individual seeking reinstatement is required to submit an application for reinstatement, pay a reinstatement fee, and meet the requirements for an individual seeking reinstatement of a registration that lapsed for failure to renew.

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