

unrelated to the licensee, in the absence of a parent or guardian.³ A facility may only operate as a family foster home if it is licensed by the Kansas Department of Health and Environment (KDHE) with the approval of the Department for Children and Families (DCF).⁴

Furthermore, KAR 28-4-812 states respite care may only be provided for children in licensed family foster homes if (1) the respite care provider is in compliance with all governing family foster home regulations, and (2) the family foster home is approved to provide respite care by the sponsoring child-placing agency. Although there is no existing licensing type specific to a respite facility, for respite services to be offered by a family foster home, it must be licensed by KDHE, meet all the regulatory requirements, and have filed, written approval to provide respite care on file in that family foster home.

Short- and Long-Term Care

KAR 28-4-812 defines short-term respite care as care authorized by temporary permit or license. The number and age range of foster children authorized by the temporary permit or license can be exceeded by a sibling group of any size or a maximum of two additional children in foster care, and if short-term respite care is provided during sleeping hours, there must be an individual bed available for each child. Respite care exceeding 24 hours is considered long term; to provide such care, the family foster home must maintain their licensed capacity. Temporary permits to operate a family foster home, for not more than 90 days, can be issued by KDHE without the approval of DCF.⁵

The DCF Foster Care and Residential Facility Licensing Division is responsible for regulating child care facilities and ensuring foster care facilities that provide 24-hour care are operating in compliance with health, safety, and welfare regulations.⁶ Per KSA 65-504, DCF has the right of entry and access to information pertaining to any family foster care facility and may investigate a family foster care facility when it deems necessary.

Emergency Care

Another type of respite care service is emergency care, defined in KAR 28-4-113 as “care for a period not exceeding two weeks for children not regularly enrolled in a facility.” Facilities that provide emergency respite care must meet the regulatory requirements for each licensed facility. Emergency care is provided by group boarding homes and residential centers or by law enforcement in juvenile detention centers.⁷

Detention centers must be licensed by the Department of Corrections to provide emergency care.⁸ This type of respite service is defined in 2016 SB 367 as “short-term alternative placement services” or “emergency shelter” services.⁹ SB 367 only allows the use of

3 KAR 28-4-800(m); KAR 28-4-311; KSA 65-504; KSA 65-501

4 KSA 65-504(a); KSA 65-501; KAR 28-4-801(a)

5 KSA 65-504(a)

6 <http://www.dcf.ks.gov/Agency/GC/FCRFL/Pages/default.aspx>

7 KAR 28-4-350(d)

8 KAR 28-4-351(a)

9 http://www.kslegislature.org/li_2016/b2015_16/measures/documents/sb367_enrolled.pdf

juvenile detention facilities for short-term respite if allowed by court order or in narrow circumstances when a youth is an alleged juvenile offender. Short-term alternative placement service is only considered after all suitable alternatives are exhausted and cannot extend beyond three months.

In recent years, SB 367 was amended. In 2017, House Sub. for SB 42 amended SB 367, and the three-month limit now only applies to juveniles who have not been adjudicated of certain sex offenses, amongst other specific conditions.¹⁰ In 2018, House Sub. for SB 179 amended SB 367 by defining “juvenile detention centers” and establishing the framework for juvenile crisis intervention centers. This created a short-term rehabilitation option for juveniles experiencing a mental health crisis or those likely to cause harm to themselves or others.¹¹

Group boarding homes and residential centers also provide emergency respite care and are licensed by KDHE.¹² They admit children under three years of age to provide emergency care. This type of emergency care lasts up to 30 days, or for up to 90 days to keep siblings of foster children together.¹³

Medicaid Waivers

Respite services are offered through Medicaid home and community-based services (HCBS) waivers. The Medicaid HCBS waivers available to foster children are: Serious Emotional Disturbance (SED), Intellectual/Developmentally Disabled (I/DD), Technology Assisted (TA), Autism, and Brain Injury (BI). While there are no licenses specifically required for respite care services, some waivers do have license requirements for providers of respite care services. The requirements and qualifications for respite service providers may vary from waiver to waiver. For example, the SED waiver requires respite service providers be licensed community mental health centers, amongst other required qualifications.¹⁴ In certain circumstances, the waiver also requires the facility providing respite services to meet applicable DCF license requirements. The I/DD waiver requires respite service providers to be affiliated with the community developmental disability organization in the area that the services are provided.¹⁵ The TA waiver requires licensure by the State Board of Nursing for medical respite care providers.¹⁶

10 KSA 38-2361(k); <http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2020Briefs/H-5-Juvenile-Services.pdf>

11 KSA 38-2202(o); <http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2020Briefs/H-5-Juvenile-Services.pdf>

12 KAR 28-4-269(a); See also KSA 65-504(a)

13 KAR 28-4-273(b)(1)-(2).

14 Kansas Department for Aging and Disability Services (KDADS) SED Waiver, Appendix C: Participant Services, Page 57, https://kdads.ks.gov/docs/default-source/csp/hcbs/hcbs-policies/final-policies/sed-policies/final-sed-waiver.pdf?sfvrsn=c5ed38ee_14

15 KDADS I/DD Waiver, Appendix C: Participant Services, Page 65, https://kdads.ks.gov/docs/default-source/csp/hcbs/waiver-renewals/idd-and-bi/7-1-19-idd-cms-approved-waiver.pdf?sfvrsn=aebd05ee_4

16 KDADS TA Waiver, Appendix C: Participant Services, Page 66, https://kdads.ks.gov/docs/default-source/csp/hcbs/waiver-renewals/technology-assisted/cms-approved-ta-waiver-2019.pdf?sfvrsn=f8a504ee_2

Licensure is not included among requirements for respite care providers under the Autism waiver.¹⁷ Although the BI waiver is available to foster children, respite services are not provided under the waiver.

Funding and Support for Respite Care

Respite services are offered through institutions that are either funded by Medicaid, contracts, private funding, or grants. The Lifespan Respite Care Program was authorized by Congress in 2006 under Title XXIX of the Public Health Service Act (42 USC 300ii-1-4).¹⁸ Lifespan Respite Care programs are systems of community-based respite care services for family caregivers of children and adults with special needs. The goal of the Lifespan Respite Care Project is to improve the availability and quality of respite services to family caregivers. The specific purpose set out in statute is: “(1) to expand and enhance respite care services to family caregivers; (2) to improve statewide coordination of respite care; and (3) to provide, supplement or improve access and quality of respite care services to family caregivers, thereby reducing family caregiver strain.”

Kansas received the federal grant for The Kansas Lifespan Respite Care Project in 2010.¹⁹ The Kansas Lifespan Respite Project partnered with the Kansas Aging and Disability Resource Center (ADRC), an information source for individuals seeking support needs, and the Kansas Lifespan Respite Coalition, which was established to locate and provide access to respite care for Kansas caregivers through community.

State Lifespan Respite Care Project grantees and programs are funded by the Administration for Community Living, U.S. Department of Health and Human Services and are run by state agencies in collaboration with each state’s respite coalition and an Aging and Disability Resource Centers Program/No Wrong Door System.²⁰ Funds have been provided to 37 states and the District of Columbia to implement Lifespan Respite Care Programs.²¹ The Access to Respite Care and Help (ARCH) National Respite Network and Resource Center offers a guide to federal programs that provide respite funding and support.²²

17 KDADS Autism Waiver, Appendix C: Participant Services, Page 44, https://kdads.ks.gov/docs/default-source/CSP/HCBS/HCBS-Policies/draft-final-policies/final-cms-approved-autism-waiver.pdf?sfvrsn=a0039ee_0

18 See also pending legislation: Lifespan Respite Care Reauthorization Act of 2019, H.R. 2035, 116th Congress (2019-2020).

19 [https://www.kdads.ks.gov/commissions/home-community-based-services-\(hcbs\)/consumer-self-direction/kansas-respite-for-caregivers](https://www.kdads.ks.gov/commissions/home-community-based-services-(hcbs)/consumer-self-direction/kansas-respite-for-caregivers)

20 <https://archrespite.org/lifespan-programs>

21 <https://acl.gov/programs/support-caregivers/lifespan-respite-care-program>

22 https://lifespanrespite.wildapricot.org/Federal_Funding_Guide/