

KANSAS DEPARTMENT FOR AGING AND DISABILITY SERVICES

2019 NOVEL CORONAVIRUS ILLNESS (COVID-19) EXECUTIVE ORDER GUIDANCE

A State of Disaster Emergency was proclaimed for the State of Kansas March 12, 2020. This document provides detailed guidance related to the provisions included in Executive Order No. 20-39 and 20-41, and provides guidance to other licensing inquiries that have/may arise during this COVID-19 emergency specific to adult care homes (ACH).

ADULT CARE HOMES

LICENSING/PROVISIONAL LICENSING/CAPACITY

Protocol: ACHs with licenses in good standing as of 3/12/2020 that have or will expire during the State of Disaster Emergency shall remain valid until 90 days following the termination of the State of Disaster Emergency.

- **Guidance:** Administrators and/or operators shall contact KDADS Licensure Specialist, LaNae Workman, via email: LaNae.Workman@ks.gov with any questions.

PROVISIONAL LICENSES

Question: What about six-month limitation on provisional licenses, will they last longer than six months?

- **Response:** According to KSA 39-929, up to 1 year (initially up to six months and one additional six-month timeframe) may be granted at KDADS' discretion. At this time, when needed, KDADS shall issue a provisional license for up to 6 months and, if needed, re-evaluation the licensure timeframes. Thirty (30) calendar days after the State of Disaster Emergency is terminated, the provisional licenses shall be revoked, if the facility is unable to meet the statutory/regulatory standards for adult care homes based upon a survey.

CAPACITY

Question: Is the facility required to obtain prior approval for changes in use of room within the facility?

- **Response:** At this time, only advance notification is required to be submitted via email to a KDADS Regional Managers on the COVID-19 ACH Checklist form until the State of Disaster Emergency is terminated. (applicable regulations suspended at this time KAR 26-30-101(f) and 42 CFR 383.90).

Question: Is the facility required to obtain prior approval for change in resident capacity waived?

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- **Response:** At this time, only advance notification is required to be submitted via email to a KDADS Regional Managers on the COVID-19 ACH Checklist form until the State of Disaster Emergency is terminated. (applicable regulations suspended at this time K.A.R. 26-39-101(b).

Protocol: ACHs may exceed licensed bed capacity if the capability exists to care for additional residents in a safe manner. The restriction in effective date of a resident capacity change to the first day of the month following approval has been waived.

- **Guidance:** Prior to exceeding current licensed bed capacity, the facility must provide advanced notice to KDADS to be submitted via email to a KDADS Regional Managers on the COVID-19 ACH Checklist form. Additionally, the facility must follow CMS Guidance regarding separation of residents/patients who are COVID-19 positive from COVID-19 negative residents/patients. (applicable regulation K.A.R. 26-39-101(g)). The bed capacity shall return to its original capacity 30 calendar days after the State of Disaster Emergency is terminated.

MANAGEMENT

Question: Are multiple ACHs permitted to be supervised by one administrator and/or operator?

- **Response:** At this time, an administrator and/or operator may supervise more than one facility, except the ACHs must be within a geographical location¹ to conduct on-site supervision daily when needed. (applicable regulations suspended at this time K.A.R. 26-39-101(i) and K.A.R. 28-39-163(a)(4)).

FEES & ASSESSMENTS

Protocol: Fee typically associated with Changes to Bed Capacity, **WAIVED** until 90 days following the termination of the State of Disaster Emergency

- **Guidance:** At this time, only advance notification is required before bed capacity is changed. Such notice shall be provided to be submitted via email to a KDADS Regional Managers on the COVID-19 ACH Checklist form until the State of Disaster Emergency is terminated. At the conclusion of the State of Disaster Emergency, ACHs must return to the original bed capacity approved by the State of Kansas prior to the emergency within 30 calendar days. Additionally, after the 30 calendar days

¹ KDADS is not prescriptive of the actual or specific distance between facilities.

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following the termination of the State of Disaster Emergency, the facility must come into compliance with how to request a change in bed capacity including, but not limited to, submitting an application and passing a survey.

Protocol: The Quality Care Assessment is not suspended during the State of Disaster Emergency.

- **Guidance:** All adult care homes are required to remit the quality care assessment in the amount that was established prior to March 12, 2020. Any modification to bed capacity during the State of Disaster Emergency shall not impact the amount of quality care assessment owed, unless there is a change of ownership. If there is/was a change of ownership pending before or during the State of Disaster Emergency, if there is a question regarding the amount of the quality care assessment that is owed, please contact Georgianna Correll via email Georgianna.Correll@ks.gov.

STAFFING REQUIREMENTS

Question: Are staffing requirements and duty established in KAR 28-39-164 suspended during the State of Disaster Emergency?

- **Response:** Not at this time.

Question: Is provisional employment extended beyond 60 calendar days?

- **Response:** Not at this time. Background checks will be processed as normal, excluding fingerprinting. (applicable statutory and regulatory references K.S.A. 39-970(f), K.S.A. 65-5117(e) and K.S.A. 39-2009(f)).

STAFF TRAINING REQUIREMENTS

General Notation: As it relates to Annual In-Service training(s), all adult care homes shall have until June 30, 2021 to complete annual training due for 2020.

Protocol: Requirements established in K.A.R. 28-39-163(g) regarding Orientation requirements and competency evaluations are waived during the State of Disaster Emergency.

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- **Guidance:** In place of the normal regulatory requirements, ACHs shall provide all orientation materials to those providing care (including but not limited to employees and volunteers). Additionally, the facility shall provide a baseline level of training for safety of residents. The facility shall ensure that all those providing care/services can provide competent care.

PHYSICIAN SERVICES

Question: Are adult care homes required to comply with K.S.A. 39-936(e) during this State of Disaster Emergency?

- **Response:** Yes. Telehealth may be used when needed and appropriate. (applicable regulations K.A.R. 26-39-102(e)(2); K.A.R. 28-39-155; K.A.R. 28-39-163(k)(3); K.A.R. 28-39-163(i)(3). CMS has waived 42 CFR 482.30 to allow for telehealth).

Question: Are the standards for documenting telephone orders relaxed during the State of Disaster Emergency?

- **Response:** This is permissible subject to approval or coordination of the Board of Healing Arts and Kansas Board of Nursing. (applicable regulations K.A.R. 28-39-155(b)(4); K.A.R. 28-39-156(b)(4)).

DENTAL SERVICES

Question: Are the requirements for the annual (non-emergency) dental visits temporarily suspended during the State of Disaster Emergency?

- **Response:** Yes. ACH may use telehealth, where available. (applicable regulations K.A.R. 28-39-159)

DIETARY SERVICES

Question: Who can be a feeding assistant?

- **Response:** The Certified Nurse Aide curriculum includes the feeding assistant component, so CNAs may serve as feeding assistants. Additionally, in the CNA curriculum, if Part I of the course is completed a Nurse Aide Trainee II may also serve as feeding assistant.

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TUBERCULOSIS TESTING

Question: Is the requirement to conduct TB Testing waived during the State of Disaster Emergency?

- **Response:** Not at this time. (applicable guidelines and regulation: 2008 TB Guidelines for adult care homes, adopted by reference in K.A.R. 26-39-105, and 2013 TB Guidelines for adult care homes).

RESIDENT TRANSFER, DISCHARGE, CARE PLANNING, ASSESSMENTS, RECORDS, PROVIDERS, & GATHERINGS

Protocol: Requirements related to interfacility transfers are waived.

- **Guidance:** Requirements identified in K.A.R. 26-39-102 related to notification requirements for interfacility transfer are waived to allow for maximum responsiveness, infection control measures and specialized service needs.

Protocol: The transfer and/or discharge 30-day notification requirements are suspended until 30 calendar days after termination of the State of Disaster Emergency.

- **Guidance:** At this time, written notice within 5 calendar days of a transfer or discharge is required to be provided to the Kansas Department for Aging and Disability Services until the State of Disaster Emergency is terminated. These transfers and/or discharges may only occur specific to COVID-19 quarantine. (applicable statute and regulations K.S.A. 39-936(g), K.A.R. 26-39-102(f) and K.A.R. 26-39-101(g)).

Protocol: Timeframes for the completion of resident care plans are suspended.

- **Guidance:** However, 45 calendar days after the termination of the State of Disaster Emergency, all residents shall have a current resident care plan.

Question: Will there be a suspension of K.A.R. 28-39-151 as it relates to the timelines for comprehensive assessments, quarterly review assessments and yearly assessments?

- **Response:** Yes, KDADS will align with the federal stance on this matter. At the conclusion of the COVID-19 emergency, unless CMS issues guidance otherwise, KDADS' expectation shall be for adult care homes to complete the comprehensive assessment

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for its residents within 30 calendar days, then all assessments (comprehensive, quarterly, and yearly) shall again be due in their normal course beginning in and during 2021. (applicable regulation waived by CMS 42 CFR 483.20)

Protocol: Requirements regarding resident records being available for inspection within 2 calendar days are suspended until there is a termination of the State Disaster Emergency.

- **Guidance:** During the State of Disaster Emergency, the regulation will go into full force and effect at the conclusion of the State of Disaster Emergency. (applicable regulation K.A.R. 26-39-103(d)(1)).

Protocol: The choice of provider requirement identified in KAR 26-39-103(f) is suspended during the State of Disaster Emergency.

- **Guidance:** Once the State of Disaster Emergency is terminated this regulation will immediately go back into full effect.

Protocol: The right to meet/participate in organized groups identified in KAR 28-39-153(c) is suspended during the State of Disaster Emergency.

- **Guidance:** Once the State of Disaster Emergency is terminated this regulation will immediately go back into full effect. *Note:* CMS has waived 42 CFR 483.101(f)(5) to restrict resident rights to participate in resident groups in order to follow restrictions on in-person gatherings and social distancing. This process also allows for the isolation that is required by CMS and the CDC.

PHYSICAL ENVIRONMENT

Question: Are the requirements set out in K.A.R. 26-40-301, K.A.R. 26-40-303 through K.A.R. 26-40-305; K.A.R. 28-39-437; K.A.R. 28-39-254 through K.A.R. 28-39-256; K.S.A. 39-939(a) related to physical environment waived during the State of Disaster Emergency?

- **Response:** Yes, for the purpose of allowing appropriate quarantine, isolation, and recovery areas and to allow homes to expand overall capacity to meet possible high demand for services. As it relates to capacity please see the CAPACITY section that begins on page 1 of this guidance for additional considerations. (applicable regulation waived by CMS 42 CFR 483.90).

INDIVIDUAL CREDENTIALING

EXTENSION OF EXPIRATION DATES

Question: Will KDADS address individuals with licenses, certifications, or registrations (hereafter referred to a credentialing or credentialed) receive extended credentialing during the State of Disaster Emergency?

- **Response:** If KDADS credentialed persons are active and in good standing as of March 12, 2020, the date the State of Disaster Emergency was proclaimed, such individuals will remain valid until 90 days following the termination of the State of Disaster Emergency during the State of Disaster Emergency. **No** additional action is required of the credentialed person to maintain the credentialing during the State of Disaster Emergency. However, after 90 days following the termination of the State of Disaster Emergency, all renewal requirements outlined by statute and regulation must be met or the credentialing will lapse. The following types of credentialing persons are covered by this guidance:

- Certified Nurse Aide (CNA), Certified Medication Aide (CMA), Home Health Aide (HHA)
- Registered Operator
- Licensed Adult Care Home Administrator
- Licensed Speech-Language Pathologist and/or Audiologist
- Licensed Dietitian

LATE FEES

Question: Will late fees be assessed to credentialed persons during the State of Disaster Emergency?

- **Response:** Any late, delinquent, or penalty fees associated with any KDADS credentialed² person shall be waived during the State of Disaster Emergency.

CONTINUING EDUCATION

Question: What continuing education is required of KDADS credentialed persons during the State of Disaster Emergency?

² CNA, CMA, HHA, Licensed Adult Care Home Administrator, Licensed Speech-Language Pathologist and/or Audiologist, Licensed Dietitians

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- **Response:** At this time, all deadlines for continuing education requirements for current KDADS credentialed persons are extended until 90 calendar days following the termination of the State of Disaster Emergency. If the required continuing education has not been obtained by 90 calendar days following the termination of the State of Disaster Emergency the KDADS credential will lapse.

ADDITION OF SUPPLEMENTARY STAFFING, INCLUDING SOME CREDENTIALLED STAFF

Question: Due to staffing concerns, can individuals who are licensed in the United States, but outside of Kansas, be permitted to work in a Kansas adult care home during the state of disaster emergency?

- **Response:** A temporary license may be issued for persons who are currently licensed in the United States by another state besides Kansas. This will occur for persons whose license was/is active and in good standing prior to March 12, 2020. The temporary license, if granted, will correspond to the license held outside of Kansas. Individuals seeking the temporary license shall complete and submit the temporary license application found on the KDADS' Health Occupations Credentialing webpage within 24 hours of working at the Kansas adult care home. No fees or other documents are required for these temporary licenses. Criminal Record Checks, with the exception of fingerprinting, and other criteria typically required of staff are still required. Ninety (90) calendar days after the State of Disaster Emergency is terminated, the temporary license will lapse. The State of Disaster Emergency was terminated on May 26, 2020, making the expiration date for the temporary license effective August 24, 2020. If the individual desires to become licensed in Kansas, he or she must comply with applicable Kansas laws in order to obtain a license. The following license types are permitted to seek a temporary Kansas license:
- Licensed Adult Care Home Administrator
 - Licensed Speech-Language Pathologist and/or Audiologist
 - Licensed Dietitian

Question: Due to staffing concerns, can individuals who were once credentialed with KDADS be permitted to work in the adult care home during the state of disaster emergency?

- **Response:** A temporary credential (license, certification, or registration) may be issued for persons who were previously credentialed by KDADS. This will only occur for persons who were in good standing prior to the lapse of the license, certification or registration. The credential, if granted, will correspond to the type of credentialing previously held. In addition, the license, certification or registration may not have been issued more than 5 years prior to March 12, 2020. Individuals seeking the temporary credential shall complete and submit the temporary credential application found on the KDADS' Health Occupations Credentialing

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webpage within 24 hours of working at the adult care home. No fees or other documents are required for these temporary credentials. Criminal Record Checks, with the exception of fingerprinting, and other criteria typically required of staff are still required. Ninety (90) calendar days after the State of Disaster Emergency is terminated, the temporary credential will lapse. If the individual desires to become credentialed in Kansas, he or she must comply with applicable Kansas laws in order to obtain/restore/maintain a regular license, certification, or registration.

CREDENTIALING FEES

Question: Will credentialing fees be suspended during the State of Disaster Emergency?

- **Response:** No fee will be assessed for individuals seeking temporary license based on out of state licensure and for those individuals seeking temporary credentials who were previously credentialed in Kansas. Fees as a condition of licensure, certification, registration or renewal of a license, certification, or registration, or reinstatement within five (5) years of lapsed license are suspended until 90 days following termination of the State of Disaster Emergency. The State of Disaster Emergency was terminated on May 26, 2020, making the expiration date for the temporary license effective August 24, 2020.

Question: Due to staffing concerns, can individuals who were not previously credentialed anywhere in the United States be permitted to work in a Kansas adult care home during the state of disaster emergency?

- **Response:** A temporary aide authorization may be approved by the adult care home where such an individual will work. The temporary aide must complete a baseline of training within said adult care home including but not limited to: infection control, proper patient handling, and how to effectively assist with the performance of activities of daily living. The adult care home shall maintain records demonstrating the training and competency of the temporary aide. This authorization may only be used during the State of Disaster Emergency only. No fees or other documents are required for this temporary authorization. Criminal Record Checks, with the exception of fingerprinting, and other criteria typically required of staff are still required. Immediately following the termination of the State of Disaster Emergency, the temporary aide authorization will lapse. If the individual desires to become credentialed in Kansas, he or she must comply with applicable Kansas laws in order to obtain a license, certification, or registration in Kansas. For detailed information, including course information, please visit the following: https://www.kdads.ks.gov/docs/default-source/covid-19/hoc/temporary-aide-guidance.pdf?sfvrsn=b1a002ee_4
- OR

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- **Response:** A temporary authorization may be approved by the adult care home where the individual will work. The individuals who may be served by those who hold this temporary authorization are individuals who only require minimal supervision/assistance with activities of daily living. The facility, at a minimum, needs to ensure persons with a temporary authorization are competent to perform/execute their duties, including but not limited to: infection control, proper patient handling, and how to effectively assist with the performance of activities of daily living. The adult care home shall maintain records demonstrating the training and competency of these individuals. This authorization may only be used during the State of Disaster Emergency only. No fees or other documents are required for this temporary authorization. Criminal Record Checks, with the exception of fingerprinting, and other criteria typically required of staff are still required. Immediately following the termination of the State of Disaster Emergency, the temporary authorization will lapse. If the individual desires to become credentialed in Kansas, he or she must comply with applicable Kansas laws in order to obtain a license, certification, or registration in Kansas.

CRIMINAL RECORD CHECKS

Question: Are criminal record checks required for workers in adult care home?

- **Response:** Yes, adult care homes are required to comply with K.S.A. 39-970, K.S.A. 39-2009, K.S.A. 65-5117, except for fingerprinting. These will be the same name-based criminal record checks that all other employees undergo. These statutes allow for 60-day provisional employment while awaiting results.

Question: Are criminal record checks required for individually credentialed person?

- **Response:** Yes, name-based criminal record checks will continue to be conducted for new licensees at no cost to the facility or the applicant. These will be processed internally by KDADS Health Occupations Credentialing licensing staff and does require any action by the facility.

CERTIFIED NURSE AIDE TRAINING COURSE (INCLUDING CMA/HHA)

Question: Will there be an extension on the four-month limitation for nurse aide Trainee II workers to provide direct care?

- **Response:** Yes. In order to assist in potential staffing shortages seen with the COVID-19 pandemic and to ensure the health and safety of nursing home residents, CMS is waiving the requirements at 42 CFR 483.35(d) (with the exception of 42 CFR 483.35(d)(1)(i)). This will allow ACHs to employ nurse aide Trainee II workers for more than four months, on a full-time basis.

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➤ **Notes:**

- The requirement at 42 CFR 483.35(c) which requires ACHs to ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments and described in the plan of care.
- Under K.A.R. 26-50-20, students that complete Part I of the Certified Nurse Aide program including the Nurse Aide training and competency evaluation program task checklist may be employed as a nurse aide Trainee II. Any individual that has been determined to have training equivalent to the nursing aide training, and upon receiving written approval from KDADS also can work as a nurse aide Trainee II. A nurse aide Trainee II can provide direct care to residents for 6 months from the beginning date of the CNA course or written approval from KDADS under the direct supervision of a Registered Nurse or Licensed Practical Nurse. This timeframe may be subject to review after 6 months if necessary.

Question: Will clinical hours be credited to those working as Nurse Aide Trainee II?

- **Response:** Yes. Hours worked as a nurse aide Trainee II will satisfy the requirement for 25 hours of supervised clinical instruction in the second section of the CNA training. The Facility Coordinator that employs the nurse aide Trainee II will provide documentation of hours worked to the student's CNA course instructor. The course instructor must provide this documentation to KDADS Health Occupations Credentialing including student identifier and course number before allowing the student to take the qualifying exam for CNA credentialing. A revised form for this purpose can be obtained from the KDADS Health Occupations Credentialing web page.

Question: Will an extension of 12-month timeframe for CNA and CMA trainees to pass exams be granted?

- **Response:** Yes. The requirements that CMA and CNA trainees pass the exams within 12 months of training identified in K.A.R. 26-50-24 and K.A.R. 26-50-34 have been extended for individuals that receive written approval from KDADS to test prior to March 12, 2020 through the termination of the State of Disaster Emergency. The 12-month timeframe was frozen as of March 12, 2020, and when the State of Disaster Emergency is concluded then the clock for the 12-months will begin again. (In other words: if an individual received written approval from KDADS to test and had 6 months left in the 12-month timeframe, when the State of Disaster Emergency is terminated then that individual will still have 6 months to complete and pass the examination)

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COURSE SUPERVISORS, INSTRUCTIONS AND APPLICATIONS SPECIFIC TO KAR 26-50-22

Question: Will the requirements set out in K.A.R. 26-50-22(a) and (b) regarding Certification Course Supervisor Qualifications and Course Supervisor Applications still apply during the State of Disaster Emergency?

- **Response:** Yes. Course supervisor applications will continue to be processed. There will be a case by case review if needed for situations that warrant additional consideration.

Question: Will the requirements set out in K.A.R. 26-50-22(c) regarding Certification Course Instructor Qualifications still apply during the State of Disaster Emergency?

- **Response:** Yes. Instructor applications will continue to be processed. There will be a case by case review if needed for situations that warrant additional consideration. Additionally, criteria set out in 42 CFR 483.152(i) has not been waived at this time, therefore all must still comply.

Question: Will the requirements set forth in K.A.R. 26-50-22(f) regarding Certification Course Applications still apply during the State of Disaster Emergency?

- **Response:** Yes. Course applications will continue to be processed. Additionally, criteria set out in 42 CFR 483.152 has not been waived at this time, therefore all must still comply.