



Kansas Department for Aging and Disability Services

Statutes and Regulations for the Licensure and Operation
of
Intermediate Care Facilities for Individuals with
Intellectual Disabilities

ADULT CARE HOME STATUTES KANSAS STATUTES ANNOTATED

The department on aging is renamed the Kansas department for aging and disability services and the secretary of aging is renamed the secretary of aging and disability services, pursuant to Executive Reorganization Order No. 41, Laws 2012, ch. 185, § 1, eff. July 1, 2012, K.S.A. 39-1901.

All statutes are current through 2012 regular session.

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39-923. Definitions. (a) As used in this act:

(1) “Adult care home” means any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary of aging.

(2) “Nursing facility” means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) “Nursing facility for mental health” means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) “Intermediate care facility for people with intellectual disability” means any place or facility operating 24 hours a day, seven days a week, caring for four or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by intellectual disability or related conditions, need services to compensate for activities of daily living limitations.

(5) “Assisted living facility” means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week, for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) “Residential health care facility” means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-days-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) "Home plus" means any residence or facility caring for not more than 12 individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided to residents shall be determined by preparation of the staff and rules and regulations developed by the department on aging. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than 12-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous. Any home plus that provides care for more than eight individuals after the effective date of this act shall adjust staffing personnel and resources as necessary to meet residents' needs in order to maintain the current level of nursing care standards. Personnel of any home plus who provide services for residents with dementia shall be required to take annual dementia care training.

(8) "Boarding care home" means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of or assistance with activities of daily living.

(10) "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

(11) "Skilled nursing care" means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

(16) "Licensing agency" means the secretary of aging.

(17) "Skilled nursing home" means a nursing facility.

(18) "Intermediate nursing care home" means a nursing facility.

(19) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(20) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.

(21) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the secretary of health and environment on principles of assisted living and such other requirements as may be established by the secretary of health and environment by rules and regulations.

(22) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility and toileting.

(23) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.

(24) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(25) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(26) The term "intermediate personal care home" for purposes of those individuals applying for or receiving veterans' benefits means residential health care facility.

(27) "Paid nutrition assistant" means an individual who is paid to feed residents of an adult care home, or who is used under an arrangement with another agency or organization, who is trained by a person meeting nurse aide instructor qualifications as prescribed by 42 C.F.R. § 483.152, 42 C.F.R. § 483.160 and paragraph (h) of 42 C.F.R. § 483.35, and who provides such assistance under the supervision of a registered professional or licensed practical nurse.

(28) "Medicaid program" means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity

centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 et seq., and amendments thereto, and which provide services only to hospice patients.

(c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(d) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

(e) Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

(f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

History: Laws 1961, ch. 231, § 1; Laws 1967, ch. 246, § 1; Laws 1972, ch. 171, § 1; Laws 1975, ch. 462, § 39; Laws 1978, ch. 161, § 11; Laws 1982, ch. 189, § 1; Laws 1983, ch. 146, § 1; Laws 1992, ch. 322, § 7; Laws 1994, ch. 6, § 2; Laws 1994, ch. 279, § 2; Laws 1995, ch. 143, § 1; Laws 1998, ch. 200, § 3; Laws 2002, ch. 197, § 7; Laws 2003, ch. 149, § 2; Laws 2004, ch. 146, § 3; Laws 2011, ch. 62, § 1, eff. July 1, 2011; Laws 2012, ch. 113, § 2, eff. July 1, 2012.

39-924. Purpose of act. The purpose of this act is the development, establishment, and enforcement of standards (1) for the care, treatment, health, safety, welfare and comfort of individuals in adult care homes licensed by the secretary of aging and (2) for the construction, general hygiene, maintenance and operation of said adult care homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of such individuals in adult care homes.

History: Laws 1961, ch. 231, § 2; Laws 1972, ch. 171, § 2; Laws 1975, ch. 462, § 40; Laws 2003, ch. 149, § 3.

39-925. Administration of act; transfer of administration to secretary of aging; appointment of officer to administer the act; contracts. (a) The administration of the adult care home licensure act is hereby transferred from the secretary of health and environment to the secretary of aging,

except as otherwise provided by this act. On the effective date of this act, the administration of the adult care home licensure act shall be under authority of the secretary of aging as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire and safety authorities and other agencies of government in this state. The secretary of aging shall appoint an officer to administer the adult care home licensure act and such officer shall be in the unclassified service under the Kansas civil service act.

(b) The secretary of aging shall be a continuation of the secretary of health and environment as to the programs transferred and shall be the successor in every way to the powers, duties and functions of the secretary of health and environment for such programs, except as otherwise provided by this act. On and after the effective date of this act, for each of the programs transferred, every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of aging shall be deemed to have the same force and effect as if performed by the secretary of health and environment in whom such powers were vested prior to the effective date of this act.

(c)(1) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred adult care home survey, certification and licensing programs, and reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such programs. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the effective date of this act or thereafter.

(2) No suit, action or other proceeding, judicial or administrative, pertaining to the adult care home survey, certification and licensing programs or to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(3) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

(4) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-923 et seq., and amendments thereto, K.S.A. 39-1401 et seq., and amendments thereto, or the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto, currently pertaining to adult care home certification, survey and licensing or reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

(5) All orders and directives under the adult care home licensure act by the secretary of health and environment in existence immediately prior to the effective date of the transfer of powers, duties and functions by this act, shall continue in force and effect and shall be deemed to be

duly issued orders, and directives of the secretary of aging, until reissued, amended or nullified pursuant to law.

(d)(1) All rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, which promote the safe, proper and adequate treatment and care of individuals in adult care homes, except those specified in subsection (d)(2) of this section, shall continue to be effective and shall be deemed to be rules and regulations of the secretary of aging, until revised, amended, revoked or nullified by the secretary of aging, or otherwise, pursuant to law.

(2) The following rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, shall remain the rules and regulations of the secretary of health and environment: K.A.R. 28-39-164 through 28-39-174.

(e) All contracts shall be made in the name of "secretary of aging" and in that name the secretary of aging may sue and be sued on such contracts. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriation act of this state.

History: Laws 1961, ch. 231, § 3; Laws 1975, ch. 462, § 41; Laws 1980, ch. 182, § 10; Laws 2003, ch. 149, § 4; Laws 2010, ch. 17, § 59, eff. July 1, 2010.

39-926. License required to operate home; compliance with regulations. It shall be unlawful for any person or persons acting jointly or severally to operate an adult care home within this state except upon license first had and obtained for that purpose from the secretary of aging as the licensing agency upon application made therefor as provided in this act, and compliance with the requirements, standards, rules and regulations, promulgated under its provisions.

History: Laws 1961, ch. 231, § 4; Laws 1972, ch. 171, § 3; Laws 1975, ch. 462, § 42; Laws 1978, ch. 162, § 11; Laws 2003, ch. 149, § 5.

39-926a. Limitation on number of persons licensed to operate adult care home; application of section; section supplemental to adult care home licensure act. (a) Except as otherwise provided in this section, no more than three different persons shall be licensed to operate any one adult care home under the adult care home licensure act, and no license to operate any one adult care home shall be issued under that act to more than three different persons. The provisions of this section shall not apply to any license to operate an adult care home which is in effect on the effective date of this act and which is issued to more than three different persons, or the renewal of any such license, unless subsequent to the effective date of this act three or fewer persons operate the adult care home or the license to operate the adult care home is denied or revoked.

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

History: Laws 1983, ch. 141, § 1.

39-927. Application for license; contents; application for license to operate new intermediate nursing care home for people with intellectual disability; limitations. An application for a license to operate an adult care home shall be made in writing to the licensing agency upon forms provided by it and shall be in such form and shall contain such information as the licensing agency shall require, which may include affirmative evidence of the applicant's ability to comply with such reasonable standards and rules and regulations as are adopted under the provisions of this act. The application shall be signed by the person or persons seeking to operate an adult care home, as specified by the licensing agency, or by a duly authorized agent of any person so specified. Any nonprofit corporation operating a nursing facility for people with intellectual disability which, on the effective date of this act, includes more than one residential building located on one site or on contiguous sites may apply for a license to operate a new nursing facility for people with intellectual disability which includes more than one residential building located on one site or on contiguous sites and may apply for one license for each residential building located on the new site, except that total resident population at any such location shall not exceed 75 residents.

History: Laws 1961, ch. 231, § 5; Laws 1972, ch. 171, § 4; Laws 1976, ch. 280, § 21; Laws 1982, ch. 189, § 2; Laws 1985, ch. 150, § 1; Laws 1992, ch. 322, § 9; Laws 2012, ch. 91, § 18, eff. July 1, 2012.

39-928. Issuance of license, when; inspections and investigations; reports; time license effective; nontransferable; display; contents of license. Upon receipt of an application for license, the licensing agency with the approval of the state fire marshal shall issue a license if the applicant is fit and qualified and if the adult care home facilities meet the requirements established under this law. The licensing agency, the state fire marshal, and the county, city-county or multicounty health departments or their designated representatives shall make such inspections and investigations as are necessary to determine the conditions existing in each case and a written report of such inspections and investigations and the recommendations of the state fire marshal and the county, city-county or multicounty health department or their authorized agents shall be filed with the licensing agency. The licensing agency and the state fire marshal may designate and use county, city-county or multicounty health departments and local fire and safety authorities as their agents in making such inspections and investigations as are deemed necessary or advisable. Such local authorities are hereby authorized, empowered and directed to perform such duties as are designated. A copy of any inspection reports required by this section shall be furnished to the applicant. A license, unless sooner suspended or revoked, shall remain in effect upon filing by the licensee, and approval by the licensing agency and the state fire marshal or their duly authorized agents, of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes and payment of an annual fee. Each license shall be issued only for the

premises and persons named in the application and shall not be transferable or assignable. It shall be posted in a conspicuous place in the adult care home. If the annual report is not so filed and annual fee is not paid, such license is automatically canceled. Any license granted under the provisions of this act shall state the type of facility for which license is granted, number of residents for which granted, the person or persons to whom granted, the date and such additional information and special limitations as are deemed advisable by the licensing agency.

History: Laws 1961, ch. 231, § 6; Laws 1972, ch. 171, § 5; Laws 1980, ch. 182, § 11; Laws 1989, ch. 126, § 1.

39-929. Provisional license, approval; terms; extension. A provisional license may be issued to any adult care home, the facilities of which are temporarily unable to conform to all the standards, requirements, rules and regulations established under the provisions of this act: *Provided, however,* That the issuance of such provisional license shall be approved by the state fire marshal. A provisional license may be issued to provide time to make necessary corrections for not more than six (6) months. One additional successive six-month provisional license may be granted at the discretion of the licensing agency. A change of ownership during the provisional licensing period will not extend the time for the requirements to be met that were the basis for the provisional license nor entitle the new owner to an additional provisional license.

History: Laws 1961, ch. 231, § 7; Laws 1972, ch. 171, § 6.

39-930. License fee; disposition. (a) The fee for license to operate an adult care home shall be a base amount plus an additional amount for each bed of such home which shall be paid to the secretary of aging before the license is issued. The fee shall be fixed by rules and regulations of the secretary of aging. The amount received for the license fee shall be deposited in the state treasury in accordance with K.S.A. 75-4215, and amendments thereto, and shall be credited to the state licensure fee fund, which is hereby created in the state treasury and which shall be administered by the department on aging.

(b) If the evaluation and inspection was made by a county, city-county or multicounty health department at the direction of the secretary of aging and the papers required are completed and filed with the secretary, then the amount equal to 40% of the fee collected shall be paid to such county, city-county or multicounty health department. If a facility has a change of administrator after the commencement of the licensing period, the fee shall be \$15 and shall be deposited in the state treasury and Historyed to the state licensure fee fund.

(c) All expenditures from the state licensure fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or by the secretary's designee.

History: Laws 1961, ch. 231, § 8; Laws 1972, ch. 171, § 7; Laws 1975, ch. 462, § 43; Laws 1980, ch. 182, § 12; Laws 1982, ch. 189, § 3; Laws 1983, ch. 286, § 1; Laws 1988, ch. 145, § 1; Laws 2003, ch. 149, § 6; Laws 2007, ch. 138, § 1, eff. April 26, 2007.

39-931. Denial, suspension or revocation of license; emergency orders; settlement

agreements; certain licensure limitations. (a) Whenever the licensing agency finds a substantial failure to comply with the requirements, standards or rules and regulations established under this act or that a receiver has been appointed under K.S.A. 39-958, and amendments thereto, it shall make an order denying, suspending or revoking the license after notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto. Any applicant or licensee who is aggrieved by the order may appeal such order in accordance with the provisions of the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto.

(b) Except as provided in subsection (c), whenever the licensing agency denies, suspends or revokes a license under this section, the applicant or licensee shall not be eligible to apply for a new license or reinstatement of a license for a period of two years from the date of denial, suspension or revocation.

(c)(1) Any applicant or licensee issued an emergency order by the licensing agency denying, suspending or revoking a license under this section may apply for a new license or reinstatement of a license at any time upon submission of a written waiver of any right conferred upon such applicant or licensee under the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto, to the licensing agency in a settlement agreement or other manner as approved by the licensing agency.

(2) Any licensee issued a notice of intent to take disciplinary action by the licensing agency under this section may enter into a settlement agreement or other manner as approved by the licensing agency, with the licensing agency, at any time upon submission of a written waiver of any right conferred upon such licensee under the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto. (d) No person shall operate an intermediate care facility for people with intellectual disability of five beds or less, as defined by subsection (a)(4) of K.S.A. 39-923, and amendments thereto, within this state unless such person:

(A) Is issued a license by the licensing agency on or before January 1, 2012; or

(B) participated in the medicaid program as an intermediate care facility for people with intellectual disability of five beds or less, on or before January 1, 2012.

History: Laws 1961, ch. 231, § 9; Laws 1975, ch. 462, § 44; Laws 1978, ch. 162, § 12; Laws 1982, ch. 258, § 1; Laws 1983, ch. 147, § 1; Laws 1984, ch. 313, § 65; Laws 2010, ch. 17, § 60, eff. July 1, 2010; Laws 2012, ch. 113, § 3, eff. July 1, 2012.

39-931a. Same; grounds; person defined. (a) As used in this section, the term “person” means any person who is an applicant for a license to operate an adult care home or who is the licensee of an adult care home and who has any direct or indirect ownership interest of 25% or more in an adult care home or who is the owner, in whole or in part, of any mortgage, deed of trust, note or other obligation secured, in whole or in part, by such facility or any of the property or assets of such facility, or who, if the facility is organized as a corporation, is an officer or director of the corporation, or who, if the facility is organized as a partnership, is a partner.

(b) Pursuant to K.S.A. 39-931, and amendments thereto, the licensing agency may deny a license to any person and may suspend or revoke the license of any person who:

(1) Has willfully or repeatedly violated any provision of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated and amendments thereto;

(2) has had a license to operate an adult care home denied, suspended, revoked or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia or other country, a certified copy of the record of such action of the other jurisdiction being conclusive evidence thereof;

(3) has failed or refused to comply with the medicaid requirements of title XIX of the social security act, or medicaid regulations under chapter IV of title 42 of the code of federal regulations, a certified copy of the record of such action being conclusive evidence thereof;

(4) has failed or refused to comply with the medicare requirements of chapter 7 of title 42 of the United States code, or medicare regulations under chapter IV of title 42 of the code of federal regulations, a certified copy of the record of such action being conclusive evidence thereof;

(5) has been convicted of a felony;

(6) has failed to assure that nutrition, medication and treatment of residents, including the use of restraints, are in accordance with acceptable medical practices;

(7) has aided, abetted, sanctioned or condoned any violation of law or rules and regulations adopted pursuant to article 9 of chapter 39 of the Kansas Statutes Annotated; or

(8) has willfully admitted a person to a nursing facility in violation of K.S.A. 39-968, and amendments thereto.

History: Laws 1978, ch. 161, § 9; Laws 1992, ch. 322, § 3; Laws 1994, ch. 147, § 2; Laws 2012, ch. 113, § 4, eff. July 1, 2012.

39-932. Adoption and enforcement of rules, regulations and standards. The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards as may be deemed practicable, reasonable and necessary with respect to all adult care homes, to be licensed hereunder and as may be designed to further the accomplishment of the purpose of this law in promoting safe, proper and adequate treatment and care of individuals in adult care homes in the interest of public health, safety and welfare. Such rules and regulations may prescribe minimum standards and

requirements relating to the location, building, construction, size, equipment and facilities of adult care homes, the number and kind of residents allowed, the types of care offered, the records to be kept, the kind and frequency of reports and inventories to be made, and may generally establish such requirements as may be deemed necessary to protect the health, safety, hygiene, welfare and comfort of the residents.

Adult care homes which are in operation at the time of promulgation of any applicable rules and regulations or minimum standards under this act shall be given a reasonable time, under the particular circumstances not to exceed twelve (12) months from the date of such promulgation, within which to comply with such rules and regulations and minimum standards. The licensing agency may further establish by regulation a system whereby it may, on the basis of the investigations and evaluations herein provided for, uniformly rate adult care homes in terms of the quality and quantity of services and facilities provided.

History: Laws 1961, ch. 231, § 10; 1972, ch. 171, § 8.

39-932a. Adult care homes in less than an entire building. The licensing agency shall provide by rules and regulations for the licensing of adult care homes in any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, in addition to licensing of adult care homes in entire buildings. In the case of adult care homes in less than an entire building, the licensing agency shall prescribe acceptable use and occupancy of the balance of such building, and shall prohibit those uses and occupancies which are deemed to be contrary to the public interest.

History: Laws 1967, ch. 246, § 2.

39-933. Inspections and investigations; regulations for changes in facilities. The licensing agency shall make or cause to be made by the county, city-county or multicounty health departments such inspections and investigations as it deems necessary. The licensing agency may prescribe by regulation that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall submit plans and specifications therefor, before commencing such alterations, additions or new construction, to the licensing agency for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. Necessary conferences and consultations may be provided.

History: Laws 1961, ch. 231, § 11; Laws 1980, ch. 182, § 13.

39-934. Certain information confidential. Information received by the licensing agency through filed reports, inspections, or as otherwise authorized under this law, shall not be disclosed publicly in such manner as to identify individuals.

History: Laws 1961, ch. 231, § 12; Laws 1972, ch. 171, § 9; Laws 1975, ch. 238, § 1.

39-935. Inspections; reporting; access to premises; exit interviews; unannounced inspections; inspection reports, posting and access; risk management program, when required; admissibility of reports.

(a) Inspections shall be made and reported in writing by the authorized agents and representatives of the licensing agency and state fire marshal, and of the county, city-county and multicounty health departments as often and in the manner and form prescribed by the rules and regulations promulgated under the provisions of this act. Access shall be given to the premises of any adult care home at any time upon presenting adequate identification to carry out the requirements of this section and the provisions and purposes of this act, and failure to provide such access shall constitute grounds for denial or revocation of license. A copy of any inspection reports required by this section shall be furnished to the applicant, except that a copy of the preliminary inspection report signed jointly by a representative of the adult care home and the inspector shall be left with the applicant when an inspection under this section is completed. This preliminary inspection report shall constitute the final record of deficiencies assessed against the adult care home during the inspection, all deficiencies shall be specifically listed and no additional deficiencies based upon the data developed at that time shall be assessed at a later time. An exit interview shall be conducted in conjunction with the joint signing of the preliminary inspection report.

(b) The authorized agents and representatives of the licensing agency shall conduct at least one unannounced inspection of each adult care home within 15 months of any previous inspection for the purpose of determining whether the adult care home is complying with applicable statutes and rules and regulations relating to the health and safety of the residents of the adult care home. The statewide average interval between inspections shall not exceed 12 months.

(c) Every adult care home shall post in a conspicuous place a notice indicating that the most recent inspection report and related documents may be examined in the office of the administrator of the adult care home. Upon request, every adult care home shall provide to any person a copy of the most recent inspection report and related documents, provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

(d) Each nursing facility that provides skilled nursing care, nursing facility for mental health that provides skilled nursing care or assisted living facility may establish and maintain a risk management program which shall consist of:

(1) A system for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(2) measures to minimize the occurrence of reportable incidents and the resulting injuries within the facility; and

(3) a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer or risk

manager of the facility. Any reports and records reviewed, obtained or prepared by the department on aging in connection with any reportable incidents referred for investigation under such risk management program, including any reports and records reflecting the results of an inspection or survey under this chapter or in accordance with the regulations, guidelines and procedures issued by the United States secretary of health and human services under Titles XVIII and XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. § 301, as amended, shall not be admissible in any civil action under the laws of the state of Kansas unless the court determines on the record, following a hearing outside the presence of the jury, that the proffered evidence excerpted from any report, record, inspection or survey is relevant and substantially related to the plaintiff's allegations and otherwise admissible under the rules of evidence set forth in article 4, chapter 60 of the Kansas Statutes Annotated, and amendments thereto. This subsection shall not be construed to limit or impair a person's or entity's discovery of or access to any such report, record, inspection or survey under state or federal law; limit or impair the authority of the department on aging to investigate complaints or reportable incidents under state or federal law; or diminish or expand the department on aging's discovery of or access to quality assessment and assurance committee records under state or federal law.

History: Laws 1961, ch. 231, § 13; Laws 1972, ch. 171, § 10; Laws 1977, ch. 152, § 1; Laws 1978, ch. 162, § 13; Laws 1980, ch. 182, § 14; Laws 1989, ch. 126, § 2; Laws 2005, ch. 127, § 1.

39-936. Statement on admission; qualified personnel; education and training of unlicensed personnel; examination and fees; state registry established; refresher course required; supplier of medication; limitations on involuntary transfer or discharge of resident; effect of reliance upon spiritual means or prayer for healing by resident. (a) The presence of each resident in an adult care home shall be covered by a statement provided at the time of admission, or prior thereto, setting forth the general responsibilities and services and daily or monthly charges for such responsibilities and services. Each resident shall be provided with a copy of such statement, with a copy going to any individual responsible for payment of such services and the adult care home shall keep a copy of such statement in the resident's file. No such statement shall be construed to relieve any adult care home of any requirement or obligation imposed upon it by law or by any requirement, standard or rule and regulation adopted pursuant thereto.

(b) A qualified person or persons shall be in attendance at all times upon residents receiving accommodation, board, care, training or treatment in adult care homes. The licensing agency may establish necessary standards and rules and regulations prescribing the number, qualifications, training, standards of conduct and integrity for such qualified person or persons attendant upon the residents.

(c)(1) The licensing agency shall require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to people with intellectual disability which has been granted an exception by the secretary of aging upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care

home, employed on and after the effective date of this act who provide direct, individual care to residents and who do not administer medications to residents and who have not completed a course of education and training relating to resident care and treatment approved by the secretary of health and environment or are not participating in such a course on the effective date of this act to complete successfully 40 hours of training in basic resident care skills. Any unlicensed person who has not completed 40 hours of training relating to resident care and treatment approved by the secretary of health and environment shall not provide direct, individual care to residents. The 40 hours of training shall be supervised by a registered professional nurse and the content and administration thereof shall comply with rules and regulations adopted by the secretary of health and environment. The 40 hours of training may be prepared and administered by an adult care home or by any other qualified person and may be conducted on the premises of the adult care home. The 40 hours of training required in this section shall be a part of any course of education and training required by the secretary of health and environment under subsection (c)(2). Training for paid nutrition assistants shall consist of at least eight hours of instruction, at a minimum, which meets the requirements of 42 C.F.R. § 483.160.

(2) The licensing agency may require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to people with intellectual disability which has been granted an exception by the secretary of health and environment upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, who provide direct, individual care to residents and who do not administer medications to residents and who do not meet the definition of paid nutrition assistance under paragraph (a)(27) of K.S.A. 39-923, and amendments thereto, after 90 days of employment to successfully complete an approved course of instruction and an examination relating to resident care and treatment as a condition to continued employment by an adult care home. A course of instruction may be prepared and administered by any adult care home or by any other qualified person. A course of instruction prepared and administered by an adult care home may be conducted on the premises of the adult care home which prepared and which will administer the course of instruction. The licensing agency shall not require unlicensed employees of an adult care home who provide direct, individual care to residents and who do not administer medications to residents to enroll in any particular approved course of instruction as a condition to the taking of an examination, but the secretary of health and environment shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction. Unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents may enroll in any approved course of instruction and upon completion of the approved course of instruction shall be eligible to take an examination. The examination shall be prescribed by the secretary of health and environment, shall be reasonably related to the duties performed by unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents and shall be the same examination given by the secretary of health and environment to all unlicensed

employees of adult care homes who provide direct, individual care to residents and who do not administer medications.

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

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

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

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

(d) Any person who has been employed as an unlicensed employee of an adult care home in another state may be so employed in this state without an examination if the secretary of health and environment determines that such other state requires training or examination, or both, for such employees at least equal to that required by this state.

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

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

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

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

History: Laws 1961, ch. 231, § 14; Laws 1972, ch. 171, § 11; Laws 1977, ch. 152, § 2; Laws 1978, ch. 162, § 14; Laws 1979, ch. 131, § 1; Laws 1983, ch. 148, § 1; Laws 1983, ch. 286, § 10; Laws 1989, ch. 126, § 3; Laws 1992, ch. 250, § 1; Laws 1994, ch. 3, § 1; Laws 2001, ch. 5, § 111; Laws 2003, ch. 149, § 7; Laws 2004, ch. 146, § 4; Laws 2012, ch. 91, § 19, eff. July 1, 2012.

39-937. Compliance with other laws and regulations. All pertinent laws of this state and lawfully adopted ordinances and rules and regulations shall be strictly complied with in the operation of any adult care home in this state.

History: Laws 1961, ch. 231, § 15; Laws 1972, ch. 171, § 12.

39-938. Compliance with requirements and rules and regulations; exceptions. Adult care homes shall comply with all the lawfully established requirements and rules and regulations of the secretary of aging and the state fire marshal, and any other agency of government so far as pertinent and applicable to adult care homes, their buildings, operators, staffs, facilities, maintenance, operation, conduct, and the care and treatment of residents. The administrative rules and regulations of the state board of cosmetology and of the Kansas board of barbering shall not apply to adult care homes.

History: Laws 1961, ch. 231, § 16; Laws 1972, ch. 171, § 13; Laws 1975, ch. 462, § 45; Laws 1990, ch. 225, § 23; Laws 2003, ch. 149, §

39-939. Unlawful acts. It shall be unlawful in any adult care home to house, care for or permit: (a) Any resident to stay in any unapproved room, area, or detached building.

(b) Abuse, neglect, or cruel treatment of any resident.

(c) The admission to resident status of any person who is known to suffer from any disease or condition for which the home is not authorized to provide care under the provisions of this act or the terms and conditions of its license.

History: Laws 1961, ch. 231, § 17; Laws 1972, ch. 171, § 14.

39-940. Forms for application, reports, records and inspections; records open to inspection; unlawful acts.

(a) The secretary of aging may prescribe and supply necessary forms for applications, reports, records and inspections for adult care homes. All prescribed records shall be open to inspection by the designated agents of the agencies administering this act.

(b) It shall be unlawful to:

(1) Make false entries in such records;

(2) omit any information required or make any false report concerning any adult care home;

or

(3) file or cause to be filed such false or incomplete records or reports with the department on aging or with any agency administering this act, knowing that such records or reports are false or incomplete.

History: Laws 1961, ch. 231, § 18; Laws 1972, ch. 171, § 15; Laws 1975, ch. 462, § 46; Laws 1981, ch. 187, § 1; Laws 2003, ch. 149, § 9.

39-941. Adult care homes; license and regulation; certain organizations exempt. Nothing in this act shall be construed to apply to any licensed general hospital or any nursing care facility operated by and in conjunction with a licensed hospital, or to an adult care home operated by a bona fide nonprofit religious order exclusively for the care of members of such order, and no rules, regulations, or standards shall be made or established under this act for any adult care home, conducted in accordance with the practice and principles of the body known as the Church of Christ Scientist, except as to the construction, sanitary and safe conditions of the premises, cleanliness of operation, and its physical equipment. Any organization exempted by this provision may apply for and receive a license, provided it meets the requirements of this act.

History: Laws 1961, ch. 231, § 19; Laws 1972, ch. 171, § 16; Laws 1977, ch. 153, § 1.

39-942. License in effect on effective date of act continued in effect; exceptions. All licenses, issued under the provisions of chapter 39, article 9, of the Kansas Statutes Annotated, for adult care homes or homes for the aged in force upon the taking effect of this act shall continue in force until the date of expiration unless sooner suspended or revoked as provided in this act: *Provided*, That all persons with such licenses in force upon the effective date of this act shall be permitted no less than four (4) months from their effective date to comply with the rules, regulations and standards promulgated under the authority of this act wherein those rules, regulations and standards differ in any substantial respect from those in force and effect immediately prior to the effective date hereof under the provisions of chapter 39, article 9 of the Kansas Statutes Annotated.

History: Laws 1961, ch. 231, § 20; Laws 1972, ch. 171, § 17.

39-943. Penalties. Any person operating an adult care home in this state without a license under this law shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. Any person who shall violate any other provision of this act or the requirements of any rules and regulations promulgated hereunder shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not more than \$100, or by

imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

History: Laws 1961, ch. 231, § 21; Laws 1972, ch. 171, § 18; Laws 1982, ch. 189, § 4.

39-944. Injunctions and other process. Notwithstanding the existence or pursuit of any other remedy, the secretary of aging, as the licensing agency, in the manner provided by the Kansas judicial review act, may maintain an action in the name of the state of Kansas for injunction or other process against any person or agency to restrain or prevent the operation of an adult care home without a license under this act.

History: Laws 1961, ch. 231, § 22; Laws 1972, ch. 171, § 19; Laws 1975, ch. 462, § 47; Laws 1982, ch. 189, § 5; Laws 1984, ch. 313, § 66; Laws 2003, ch. 149, § 10; Laws 2010, ch. 17, § 61, eff. July 1, 2010.

39-945. Correction orders; issuance; contents. A correction order may be issued by the secretary of aging or the secretary's designee to a person licensed to operate an adult care home whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of aging inspects or investigates an adult care home and determines that the adult care home is not in compliance with the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules and regulations promulgated thereunder which individually or jointly affects significantly and adversely the health, safety, nutrition or sanitation of the adult care home residents. The correction order shall be served upon the licensee either personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and shall specify the time allowed for correction.

History: Laws 1978, ch. 161, § 1; Laws 1980, ch. 127, § 1; Laws 1988, ch. 146, § 1; Laws 2003, ch. 149, § 11.

39-946. Civil penalty; issuance; notice of assessment; factors in determining amount of civil penalty; enforcement. (a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of aging, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of aging may assess a civil penalty in an amount not to exceed \$500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order that the adult care home has not corrected the deficiency or deficiencies listed in the correction order, but the maximum assessment shall not exceed \$2,500. A

written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) Before the assessment of a civil penalty, the secretary of aging shall consider the following factors in determining the amount of the civil penalty to be assessed:

(1) The severity of the violation;

(2) the good faith effort exercised by the adult care home to correct the violation; and

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

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

History: Laws 1978, ch. 161, § 2; Laws 1980, ch. 127, § 2; Laws 1988, ch. 146, § 2; Laws 2003, ch. 149, § 12.

39-947. Appeals to secretary; hearing; disposition of civil penalties. Any licensee against whom a civil penalty has been assessed under K.S.A. 39-946, and amendments thereto, may appeal such assessment within 10 days after receiving a written notice of assessment by filing with the secretary of aging written notice of appeal specifying why such civil penalty should not be assessed. Such appeal shall not operate to stay the payment of the civil penalty. Upon receipt of the notice of appeal, the secretary of aging shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. If the secretary of aging sustains the appeal, any civil penalties collected shall be refunded forthwith to the appellant licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary of aging. If the secretary of aging denies the appeal and no appeal from the secretary is taken to the district court in accordance with the provisions of the Kansas judicial review act, the secretary of aging shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

History: Laws 1978, ch. 161, § 3; Laws 1980, ch. 127, § 3; Laws 1984, ch. 313, § 67; Laws 2003, ch. 149, § 13; Laws 2010, ch. 17, § 62, eff. July 1, 2010.

39-947a. Informal dispute resolution; written request; procedure. (a) Upon receipt of a statement of deficiencies, an adult care home administrator may within 10 calendar days after receipt of a statement make a written request to the secretary of aging for informal dispute resolution by an independent review panel. The administrator may make one request for informal dispute resolution per inspection to dispute any deficiencies with which such administrator disagrees. The informal dispute resolution may be based upon the statement of deficiencies and any other materials submitted; however, the department shall provide the administrator with a face to face informal dispute resolution meeting upon request by the administrator.

(b) A written request for informal dispute resolution shall:

- (1) State the specific deficiencies being disputed;
- (2) provide a detailed explanation of the basis for the dispute; and
- (3) include any supporting documentation, including any information that was not available at the time of the inspection.

(c) Upon receipt of the written request provided for in subsection (a), the secretary of aging shall appoint a panel of three persons to compose the independent review panel. One member shall be an employee from the department on aging adult care home survey unit, provided that the individual did not participate in the survey in dispute. Two members shall be appointed from outside of the survey unit and may be employees of the department on aging, or a health care professional or consumer not employed by the department on aging.

(d) A request for informal dispute resolution shall not delay the timely correction of any deficiency. A facility may not seek a delay of any enforcement action against it on the grounds that the informal dispute resolution has not been completed before the effective date of the enforcement action. Any decision or proposed resolution of the independent review panel shall be advisory to the secretary of aging.

(e) Costs of the panel including traveling expenses and other expenses of the review shall be paid by the department of aging.

(f) The secretary of aging shall by rules and regulations implement the provisions of this section.

(g) This act shall be a part of and supplemental to the adult care home licensure act.

History: Laws 2004, ch. 162, § 1.

39-948. Appeals to district court; disposition of civil penalties. (a) A licensee may appeal to the district court from a decision of the secretary of aging under K.S.A. 39-947, and amendments thereto. The appeal shall be tried in accordance with the provisions of the Kansas judicial review act.

(b) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary of aging shall refund forthwith the payment of any civil penalties to the licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the court

denies the appeal, the secretary of aging shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

History: Laws 1978, ch. 161, § 4; Laws 1980, ch. 127, § 4; Laws 1984, ch. 313, § 68; Laws 2003, ch. 149, § 14; Laws 2010, ch. 17, § 63, eff. July 1, 2010.

39-949. Disposition of moneys. All civil penalties collected pursuant to the provisions of this act shall be deposited in the state general fund.

History: Laws 1978, ch. 161, § 5.

39-950. Rules and regulations. The secretary of aging may adopt rules and regulations necessary to carry out the provisions of this act.

History: Laws 1978, ch. 161, § 6; Laws 2003, ch. 149, § 15.

39-951. Authority granted under act additional and not limiting. The authority granted to the secretary of aging under this act is in addition to other statutory authority the secretary of aging has to require the licensing and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of aging under article 9 of chapter 39 of the Kansas Statutes Annotated.

History: Laws 1978, ch. 161, § 7; Laws 2003, ch. 149, § 16.

39-952. Correction order not issued, when. The secretary of aging or the secretary's designee shall not issue a correction order to a person licensed to operate an adult care home because of a violation of a provision of article 9 of chapter 39 of the Kansas Statutes Annotated or a rule and regulation adopted thereunder which was caused by any person licensed by the state board of healing arts to practice a branch of the healing arts if such person licensed by the state board of healing arts is not an owner, operator or employee of the adult care home and if the person licensed to operate the adult care home shows that such person has exercised reasonable diligence in notifying the person licensed by the state board of healing arts to practice a branch of the healing arts of such person's duty to the residents of the adult care home.

History: Laws 1978, ch. 161, § 8; Laws 1999, ch. 87, § 1; Laws 2003, ch. 149, § 17.

39-953. Citation of act. K.S.A. 39-923 to 39-944, inclusive, and acts amendatory thereof or supplemental thereto, and K.S.A. 39-931a and 39-945 to 39-952, inclusive, and acts amendatory thereof or supplemental thereto, shall be known and may be cited as the adult care home licensure act.

History: Laws 1978, ch. 161, § 10.

39-953a. Order prohibiting new admissions to adult care home; when issued; proceedings; remedy not limiting. (a) At any time the secretary of aging initiates any action concerning an adult care home in which it is alleged that there has been a substantial failure to comply with the requirements, standards or rules and regulations established under the adult care home licensure act, that conditions exist in the adult care home which are life threatening or endangering to the residents of the adult care home, that the adult care home is insolvent, or that the adult care home has deficiencies which significantly and adversely affect the health, safety, nutrition or sanitation of the adult care home residents, the secretary of aging may issue an order, pursuant to the emergency proceedings provided for under the Kansas administrative procedure act, prohibiting any new admissions into the adult care home until further determination by the secretary of aging. This remedy granted to the secretary of aging is in addition to any other statutory authority the secretary of aging has relating to the licensure and operation of adult care homes and is not be construed to limit any of the powers and duties of the secretary of aging under the adult care home licensure act.

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

History: Laws 1988, ch. 146, § 3; Laws 2003, ch. 149, § 18.

39-953b. Annual report of violations resulting in issuance of correction orders and civil penalties. (a) The secretary shall issue annually to each adult care home a report summarizing by category of licensure, violation and frequency of occurrence those violations which have resulted in the issuance of correction orders and civil penalties within the preceding twelve-month period.

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

History: Laws 1988, ch. 146, § 4.

39-954. Application for receiver; order appointing; qualifications of persons designated and method of selection, rules and regulations. (a) The secretary of aging, the owner of an adult care home, or the person licensed to operate an adult care home may file an application with the district court for an order appointing the secretary of aging or the designee of the secretary as receiver to operate an adult care home whenever:

(1) Conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home;

(2) the adult care home is insolvent; or

(3) the secretary of aging has issued an order revoking the license of the adult care home.

(b) The secretary of aging may adopt rules and regulations setting forth the necessary qualifications of persons to be designated receivers and a method for selecting designees.

History: Laws 1978, ch. 162, § 1; Laws 1985, ch. 151, § 1; Laws 2003, ch. 149, § 19.

39-955. Filing application for receivership; contents. The application for receivership shall be filed in the district court in the county where the adult care home is located. The application shall be verified and set forth the specific reasons therefor.

History: Laws 1978, ch. 162, § 2.

39-956. Service of copies of application for receivership; posting in adult care home. The applicant shall serve those persons set forth in K.S.A. 39-954 with copies of the application. Service of process shall be as provided for under the code of civil procedure. The applicant shall also send five (5) copies of the application for receivership to the adult care home. The adult care home shall post the copies of the application in conspicuous places within the adult care home.

History: Laws 1978, ch. 162, § 3.

39-957. Answer to application for receivership. A party shall file an answer to the application within five (5) days after the service of the application upon such person.

History: Laws 1978, ch. 163, § 4.

39-958. Priority of application for receivership in district court; evidence; appointment of receiver; certain statutes inapplicable to license granted receiver; length of license. (a) The application for receivership shall be given priority by the district court and shall be heard no later than the seventh day following the filing of the application. A continuance of no more than 10 days may be granted by the district court for good cause. The district court shall give all parties who have filed an answer the opportunity to present evidence pertaining to the application. If the district court finds that the facts warrant the granting of the application, the court shall appoint the secretary of aging or the designee of the secretary as receiver to operate the home.

(b) Upon the appointment of a receiver under this section, the receiver shall be granted a license by the licensing agency to operate an adult care home as provided under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof or acts supplemental thereto. The provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof and acts supplemental thereto, relating to inspection prior to granting a license to operate an adult care home and relating to payment of license fees shall not apply to a license granted to a receiver under this section, and such license shall remain in effect during the existence of the receivership and shall expire on the termination of the receivership. The receiver shall make application for the license on forms provided for this purpose by the licensing agency.

History: Laws 1978, ch. 162, § 5; Laws 2003, ch. 149, § 20.

39-959. Powers and duties of receiver. A receiver appointed in accordance with the provisions of this act shall have the following powers and duties:

- (a) Conduct the day to day business operations of the adult care home;
- (b) reimburse the owner or licensee, as appropriate, a fair monthly rental for the adult care home, taking into account all relevant factors, including the condition of such adult care home and set-offs arising from improvements made by the receiver;
- (c) give fair compensation to the owner or licensee, as appropriate, for all property taken or used during the course of the receivership if such person has not previously received compensation for the property being taken or used;
- (d) correct or eliminate any deficiency in the adult care home that concerns the health, safety, nutrition, or sanitation of the residents of the adult care home and is life threatening or endangering;
- (e) enter into contracts as necessary to carry out his or her duties as receiver and incur expenses for individual items of repairs, improvements or supplies without the procurement of competitive bids, if otherwise required by law, where the total amount of such individual item does not exceed five hundred dollars (\$500);
- (f) collect incoming payments from all sources and apply them to the costs incurred in the performance of his or her functions as receiver including the compensation of the receiver, if any;
- (g) honor all existing leases, mortgages, chattel mortgages and security interests;
- (h) operate the adult care home so as to provide safe and adequate health care for the residents of the adult care home;
- (i) provide for the orderly transfer of all residents in the adult care home to other adult care homes or make other provisions for their continued safety and health care, as necessary;
- (j) other powers and duties as authorized or imposed by the district court.

History: Laws 1978, ch. 162, § 6.

39-960. Expenditures from moneys appropriated for purposes of act; when authorized; repayment.

The secretary of social and rehabilitation services, upon request of a receiver, may authorize expenditures from moneys appropriated for purposes set forth in this act if incoming payments from the operation of the adult care home are less than the cost incurred by the receiver in the performance of the receiver's functions as receiver or for purposes of initial operating expenses of the receivership. Any payments made by the secretary of social and rehabilitation services pursuant to this section shall be owed by the owner or licensee and repaid to the secretary of social and rehabilitation services when the receivership is terminated pursuant to K.S.A. 39-963 and amendments thereto and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

History: Laws 1978, ch. 162, § 7; Laws 1984, ch. 158, § 1.

39-961. Department on aging to assist receiver; expenses of department; repayment. (a) The personnel and facilities of the department on aging shall be available to the receiver for the purposes of carrying out the receiver's duties as receiver as authorized by the secretary of aging.

(b) The department on aging shall itemize and keep a ledger showing costs of personnel and other expenses establishing the receivership and assisting the receiver and such amount shall be owed by the owner or licensee to the department on aging. Such department shall submit a bill for such expenses to the receiver for inclusion in the receiver's final accounting. Any amount so billed and until repaid shall constitute a lien against all nonexempt personal and real property of the owner or licensee.

History: Laws 1978, ch. 162, § 8; Laws 1984, ch. 158, § 2; Laws 2003, ch. 149, § 21.

39-962. Supervision of district court; final accounting; removal. The receiver shall be subject to the supervision of the district court. The receiver shall file a final accounting with the district court upon the termination of the receivership. The receiver shall be subject to removal by the district court for good cause.

History: Laws 1978, ch. 162, § 9.

39-963. Termination of receivership; circumstances; accounting and disposition of money; court orders for recovery of certain expenses and costs. (a) The court shall terminate the receivership only under any of the following circumstances:

- (1) Twenty-four months after the date on which the receivership was ordered;
- (2) a new license, other than the license granted to the receiver under K.S.A. 39-958, and amendments thereto, has been granted to operate the adult care home; or
- (3) at such time as all of the residents in the adult care home have been provided alternative modes of health care, either in another adult care home or otherwise.

(b)(1) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the district court and shall make disposition of surplus money at the direction of the district court.

(2) The court may make such additional orders as are appropriate to recover the expenses and costs to the department on aging and the secretary of social and rehabilitation services incurred pursuant to K.S.A. 39-960 or 39-961, and amendments thereto.

History: Laws 1978, ch. 162, § 10; Laws 1984, ch. 158, § 3; Laws 2003, ch. 149, § 22.

39-964. Procedures for and review and enforcement of administrative actions. (a) The provisions of the Kansas administrative procedure act and the Kansas judicial review act shall

govern all administrative proceedings conducted pursuant to K.S.A. 39-945 through 39-963, and amendments thereto, except to the extent that the provisions of the above-named acts would conflict with the procedures set forth in the above-mentioned statutes.

(b) This section shall be a part of and supplemental to article 9 of chapter 39 of the Kansas Statutes Annotated.

History: Laws 1984, ch. 313, § 69; Laws 2010, ch. 17, § 64, eff. July 1, 2010.

39-965. Penalties for violations posing serious physical harm to resident.

(a) If the secretary of aging determines that an adult care home is in violation of or has violated any requirements, standards or rules and regulations established under the adult care home licensure act which violation can reasonably be determined to have resulted in, caused or posed serious physical harm to a resident, the secretary of aging in accordance with proceedings under the Kansas administrative procedure act, may assess a civil penalty against the licensee of such adult care home in an amount of not to exceed \$1,000 per day per violation for each day the secretary finds that the adult care home was not in compliance with such requirements, standards or rules and regulations but the maximum assessment shall not exceed \$10,000.

(b) All civil penalties assessed shall be due and payable in accordance with subsection (c) of K.S.A. 39-946 and K.S.A. 39-947, and amendments thereto.

(c) The secretary of aging may adopt rules and regulations which shall include due process procedures for the issuance of civil penalties relating to nursing facilities.

(d) The authority to assess civil penalties granted to the secretary of aging under this section is in addition to any other statutory authority of the secretary relating to the licensure and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of aging under the adult care home licensure act.

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

History: Laws 1992, ch. 322, § 1; Laws 2003, ch. 149, § 23.

39-966. Repealed by Laws 1994, ch 147 § 3.

39-967. Skilled nursing home or intermediate nursing care home means nursing facility.

Wherever the terms “skilled nursing home” or “intermediate nursing care home”, or words of like effect, are referred to or designated by a statute or rule and regulation, such reference or designation shall be deemed to mean “nursing facility.”

History: Laws 1992, ch. 322, § 13.

39-968. Client assessment, referral and evaluation program; definitions; implementation; data entry form; requirements; duties of secretary of aging; long-term care resource

information; rules and regulations; voluntary oversight council; annual report. (a) To achieve a quality of life for Kansans with long-term care needs in an environment of choice that maximizes independent living capabilities and recognizes diversity, this act establishes a program which is intended to encourage a wide array of quality, cost-effective and affordable long-term care choices. This program shall be known as client assessment, referral and evaluation (CARE). The purposes of CARE is for data collection and individual assessment and referral to community-based services and appropriate placement in long-term care facilities.

(b) As used in this section:

(1) "Assessment services" means evaluation of an individual's health and functional status to determine the need for long-term care services and to identify appropriate service options which meet these needs utilizing the client assessment, referral and evaluation (CARE) form.

(2) "Health care data governing board" means the board abolished by K.S.A. 65-6803, and amendments thereto.

(3) "Medical care facility" shall have the meaning ascribed to such term under K.S.A. 65-425, and amendments thereto.

(4) "Nursing facility" shall have the meaning ascribed to such term under K.S.A. 39-923, and amendments thereto.

(5) "Secretary" means the secretary of aging.

(c) There is hereby established the client assessment, referral and evaluation (CARE) program. The CARE program shall be administered by the secretary of aging and shall be implemented on a phased-in basis in accordance with the provisions of this section.

(d) All rules and regulations adopted by the health care data governing board relating to client assessment, referral and evaluation (CARE) data entry form shall be deemed to be the rules and regulations of the department of health and environment until revised, revoked or nullified pursuant to law. The purpose of this form is for data collection and referral services. Such form shall be concise and questions shall be limited to those necessary to carry out the stated purposes. The client assessment, referral and evaluation (CARE) data entry form shall include, but not be limited to, the preadmission screening and annual resident review (PASARR) questions. Prior to the adoption of the client assessment, referral and evaluation (CARE) data entry form by the health care data governing board, the secretary of aging shall approve the form. The client assessment, referral and evaluation (CARE) data entry form shall be used by all persons providing assessment services.

(e)(1) Each individual prior to admission to a nursing facility as a resident of the facility shall receive assessment services to be provided by the secretary of aging, with the assistance of area agencies on aging, except (A) such assessment services shall be provided by a medical care facility to a patient of the medical care facility who is considering becoming a resident of a nursing facility upon discharge from the medical care facility and

(B) as authorized by rules and regulations adopted by the secretary of aging pursuant to subsection (i).

(2) The provisions of this subsection (e) shall not apply to any individual exempted from preadmission screening and annual resident review under 42 code of federal regulations 483.106.

(f) The secretary of aging shall cooperate with the area agencies on aging providing assessment services under this section.

(g) The secretary of aging shall assure that each area agency on aging shall compile comprehensive resource information for use by individuals and agencies related to long-term care resources including all area offices of the department of social and rehabilitation services and local health departments. This information shall include, but not be limited to, resources available to assist persons to choose alternatives to institutional care.

(h) Nursing facilities and medical care facilities shall make available information referenced in subsection (g) to each person seeking admission or upon discharge as appropriate. Any person licensed to practice the healing arts as defined in K.S.A. 65-2802, and amendments thereto, shall make the same resource information available to any person identified as seeking or needing long-term care. Each senior center and each area agency on aging shall make available such information.

(i) The secretary shall adopt rules and regulations to govern such matters as the secretary deems necessary for the administration of this act.

(j)(1) There is hereby established an eleven-member voluntary oversight council which shall meet monthly for the purpose of assisting the secretary of aging in restructuring the assessment and referral program in a manner consistent with this act and shall meet quarterly thereafter for the purpose of monitoring and advising the secretary regarding the CARE program. The council shall be advisory only, except that the secretary of aging shall file with the council each six months the secretary's response to council comments or recommendations.

(2) The secretary of aging shall appoint two representatives of hospitals, two representatives of nursing facilities, two consumers and two representatives of providers of home and community-based services. The secretary of health and environment and the secretary of social and rehabilitation services, or their designee, shall be members of the council in addition to the eight appointed members. The secretary of aging shall serve as chairperson of the council. The appointive members of the council shall serve at the pleasure of their appointing authority. Members of the voluntary oversight council shall not be paid compensation, subsistence allowances, mileage or other expenses as otherwise may be authorized by law for attending meetings, or subcommittee meetings, of the council.

(k) The secretary of aging shall report to the governor and to the legislature on or before December 31, 1995, and each year thereafter on or before such date, an analysis of the information collected under this section. In addition, the secretary of aging shall provide data from the CARE data forms to the department of health and environment. Such data shall be provided in such a manner so as not to identify individuals.

History: Laws 1994, ch. 147, § 1; Laws 2008, ch. 110, § 3, eff. July 1, 2008; Laws 2012, ch. 102, § 15, eff. July 1, 2012.

39-969. Criminal history record information. (a) The secretary of health and environment shall upon request receive from the Kansas bureau of investigation, without charge, such criminal history

record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of an operator.

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

History: Laws 1995, ch. 143, § 8; Laws 2003, ch. 149, § 24.

39-970. Operation of adult care home precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; provision of criminal history record information by secretary; licensed or registered professional service providers, volunteers and certain employees exempt; certain persons in custody of secretary of corrections exempt; report of convictions and adjudications by the Kansas bureau of investigation. (a)(1) No person shall knowingly operate 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 capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402, prior to its repeal, or subsection (a) of K.S.A. 21-5403, and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 21-5407, and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 21-5417, and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 21-5506, and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 21-5506, and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 21-5504, and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 21-5508, and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 21-5508, and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 21-5505, and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 21-5505, and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 21-5303, and amendments thereto, or similar statutes of other

states or the federal government. The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by an adult care home on July 1, 2010 and while continuously employed by the same adult care home.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 21-6419 through 21-6421, and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be in need of a guardian or conservator, or both as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 21-5417, subsection (a) of 21-5505 and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 21-5417, subsection (a) of 21-5505 and 21-5801, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 21-5417, subsection (a) of 21-5505 and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 21-5417, subsection (a) of 21-5505 and 21-5801, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f)(1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 21-5417, subsection (a) of 21-5505 and 21-5801, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and

within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 21-5801, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 21-5801, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).

(j) No person who has been employed by the same adult care home since July 1, 1992, shall be subject to the provisions of this section while employed by such adult care home.

(k) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(l) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(m) For purposes of this section, the Kansas bureau of investigation shall report any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 21-5417, subsection (a) of 21-5505 and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 21-5417, subsection (a) of 21-5505 and 21-5801, and amendments thereto, to the secretary of health and environment when a background check is requested.

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

History: Laws 1997, ch. 161, § 1; Laws 1998, ch. 144, § 1; Laws 2001, ch. 197, § 1; Laws 2002, ch. 114, § 55; Laws 2003, ch. 98, § 1; Laws 2006, ch. 169, § 112; Laws 2010, ch. 16, § 1, eff. July 1, 2010; Laws 2011, ch. 30, § 175, eff. July 1, 2011.

39-971. Quality enhancement wage pass-through program; eligible employees; quarterly wage audits; limitations on use of pass-through moneys; “nursing facilities” defined. (a)

Notwithstanding any provision of law to the contrary, and within the limits of appropriations therefor, the secretary of social and rehabilitation services and the secretary on aging shall establish a quality enhancement wage pass-through program as part of the state medicaid plan to allow nursing facilities electing to participate in such program a payment option of not to exceed \$4 per resident day designed to increase salaries or benefits, or both, for those employees providing direct care and support services to residents of nursing facilities. The categories of employees eligible to receive the wage pass-through are the following: Nurse aides, medication aides, restorative-rehabilitation aides, licensed mental health technicians, plant operating and maintenance personnel, nonsupervisory dietary personnel, laundry personnel, housekeeping personnel and nonsupervisory activity staff. The program shall establish a pass-through wage payment system designed to reimburse facilities during the reimbursement period in which the pass-through wage payment costs are incurred.

(b) Nursing facilities shall have the option to elect to participate in the quality enhancement wage pass-through program. The wage pass-through moneys are to be paid to nursing facilities outside of cost center limits or occupancy penalties as a pass-through labor cost reimbursement. The pass-through cost shall be included in the cost report base.

(c) The quality enhancement wage pass-through program shall require quarterly wage audits for all nursing facilities participating in the program. The quarterly wage audits will require facilities to submit cost information within 45 days of the end of each quarter reporting on the use of the wage pass-through payment under the quality enhancement wage pass-through program. This

quarterly wage audit process shall be used to assure that the wage pass-through payment was used to increase salaries and benefits to direct care and other support staff as specified in this subsection or to hire additional staff that fall into the eligible personnel categories specified in this subsection.

(d) No wage pass-through moneys shall be expended to increase management compensation or facility profits. A nursing facility participating in the quality enhancement wage pass-through program which fails to file quarterly enhancement audit reports shall be terminated from the program and shall repay all amounts which the nursing facility has received under the quality enhancement wage pass-through program for that reporting period.

(e) All expenditures for the quality enhancement wage pass-through program shall be made only from moneys specifically appropriated therefor.

(f) As used in this section, "nursing facility" means a nursing facility as defined under K.S.A. 39-923, and amendments thereto, or an intermediate care facility for people with intellectual disability as defined under K.S.A. 39-923, and amendments thereto.

History: Laws 1999, ch. 101, § 1; Laws 2012, ch. 91, § 20, eff. July 1, 2012.

39-972. Residents receiving long-term care in medicaid approved institution; personal needs fund; supplemental income. (a) The head of the designated state medicaid agency shall authorize for each resident and each resident spouse of a nursing facility receiving long-term care in a medicaid approved institution to retain a certain amount of money a month in a personal needs fund. Subject to the provisions of this section, such amount shall be prescribed in rules and regulations adopted by the head of the designated state medicaid agency, except that the amount shall not be less than \$50 on and after July 1, 2006 through June 30, 2007, and on and after July 1, 2007, not less than \$60.

(b) The head of the designated state medicaid agency shall authorize for persons receiving long-term care in a medicaid approved institution who also receive supplemental security income payments of a certain amount of money per month to supplement such income. Subject to the provisions of this section, such amount shall be prescribed in rules and regulations adopted by the head of the designated state medicaid agency, except that the amount shall not be less than \$30.

(c) On or before July 1, 2007, and each year thereafter, the director of the budget shall certify to the head of the designated state medicaid agency the annual average increase in the chained consumer price index for all urban consumers for the preceding calendar year published by the United States department of labor and the head of the designated state medicaid agency may make adjustments for cost of living increases in the amount of moneys that can be retained in the personal needs funds pursuant to subsections (a) and (b) in an amount not to exceed such increase.

History: Laws 2006, ch. 208, § 10.

ABUSE, NEGLECT OR EXPLOTATION

39-1401. Abuse, neglect or exploitation of residents; definitions. As used in this act:

(a) "Resident" means:

(1) Any resident, as defined by K.S.A. 39-923, and amendments thereto; or

(2) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility; or

(3) any individual, kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923, and amendments thereto.

(c) "In need of protective services" means that a resident is unable to perform or obtain services which are necessary to maintain physical or mental health, or both.

(d) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of a resident to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

(e) "Protective services" means services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services.

(f) "Abuse" means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:

(1) Infliction of physical or mental injury;

(2) any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;

(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm a resident;

(4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the resident or another resident;

(5) a threat or menacing conduct directed toward a resident that results or might reasonably be expected to result in fear or emotional or mental distress to a resident;

(6) fiduciary abuse; or

(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

(g) "Neglect" means the failure or omission by one's self, caretaker or another person with a duty to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(h) "Caretaker" means a person or institution who has assumed the responsibility, whether legally or not, for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

(i) "Exploitation" means misappropriation of resident property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(j) "Medical care facility" means a facility licensed under K.S.A. 65-425 et seq., and amendments thereto, but shall not include, for purposes of this act, a state psychiatric hospital or state institution for people with intellectual disability, including Larned state hospital, Osawatonic state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(k) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, a resident, takes, secretes, or appropriates the resident's money or property, to any use or purpose not in the due and lawful execution of such person's trust.

(l) "State psychiatric hospital" means Larned state hospital, Osawatonic state hospital and Rainbow mental health facility.

(m) "State institution for people with intellectual disability" means Kansas neurological institute and Parsons state hospital and training center.

(n) "Report" means a description or accounting of an incident or incidents of abuse, neglect or exploitation under this act and for the purposes of this act shall not include any written assessment or findings.

(o) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes and investigate criminal acts, whether that duty extends to all crimes or is limited to specific crimes.

(p) "Legal representative" means an agent designated in a durable power of attorney, power of attorney or durable power of attorney for health care decisions or a court appointed guardian, conservator or trustee.

(q) "Financial institution" means any bank, trust company, escrow company, finance company, saving institution or credit union, chartered and supervised under state or federal law.

(r) "Governmental assistance provider" means an agency, or employee of such agency, which is funded solely or in part to provide assistance within the Kansas senior care act, K.S.A. 75-5926 et seq., and amendments thereto, including medicaid and medicare.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

History: Laws 1980, ch. 124, § 1; Laws 1983, ch. 149, § 1; Laws 1989, ch. 128, § 1; Laws 1990, ch. 153, § 1; Laws 1998, ch. 200, § 4; Laws 2003, ch. 91, § 2; Laws 2012, ch. 91, § 30, eff. July 1, 2012.

39-1402. Abuse, neglect or exploitation of residents; reporting abuse, neglect or exploitation or need of protective services; persons required to report; contents of report; posting notice of requirements of act; penalty for failure to report. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed

clinical psychotherapist, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a teacher, a bank trust officer and any other officers of financial institutions, a legal representative or a governmental assistance provider who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department on aging with respect to residents defined under subsection (a)(1) of K.S.A. 39-1401, and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services and appropriate law enforcement agencies with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924, and amendments thereto, shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department on aging with respect to residents defined under subsection (a)(1) of K.S.A. 39-1401, and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous public place in every adult care home and medical care facility in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

History: Laws 1980, ch. 124, § 2; Laws 1983, ch. 149, § 2; Laws 1985, ch. 152, § 1; Laws 1986, ch. 299, § 6; Laws 1990, ch. 153, § 2; Laws 1998, ch. 200, § 5; Laws 2001, ch. 154, § 3; Laws 2003, ch. 91, § 3; Laws 2003, ch. 149, § 26.

39-1403. Same; immunity from liability of certain persons; employer prohibited from imposing sanctions on employee making report. (a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to or investigation of such report or any other report of abuse, neglect or exploitation of an adult or who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report under this act.

History: Laws 1980, ch. 124, § 3; Laws 1983, ch. 149, § 3; Laws 1990, ch. 153, § 3; Laws 2003, ch. 91, § 4.

39-1404. Same; duties of department of social and rehabilitation services and department of health and environment; personal visit; investigation and evaluation; information provided to certain persons. (a) **The department of health and environment or the department of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services shall:**

(1) When a criminal act has occurred or has appeared to have occurred, immediately notify, in writing, the appropriate law enforcement agency;

(2) make a personal visit with the involved resident:

(A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved resident;

(B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger; or

(C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

(3) Complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved resident and what action and services, if any, are required. The investigation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case; and

(4) prepare, upon a completion of the evaluation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation; recommended action; a determination of whether protective services are needed; and any follow up.

(b) The department which investigates the report shall inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken if required upon completion of the investigation or sooner if such measures do not jeopardize the investigation.

(c) The department on aging may inform the chief administrative officer of a facility as defined by K.S.A. 39-923, and amendments thereto, within 30 days of confirmed findings of resident abuse, neglect or exploitation.

History: Laws 1980, ch. 124, § 4; Laws 1983, ch. 149, § 4; Laws 1990, ch. 153, § 4; Laws 1997, ch. 161, § 5; Laws 1998, ch. 200, § 6; Laws 2003, ch. 91, § 5; Laws 2003, ch. 149, § 27.

39-1405. Same; protective services; injunction. (a) The secretary of aging shall forward to the secretary of social and rehabilitation services any finding with respect to residents defined under (a)(1) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding with respect to residents defined under (a)(2) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. If the secretary of social and rehabilitation services determines that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident consents, or if the resident lacks capacity to consent, the secretary may obtain consent from such resident's legal representative. If a resident or such resident's legal representative, or both, fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments thereto whether a petition for appointment of a guardian or conservator, or both, should be filed.

(b) If the caretaker or legal representative, or both, of a resident who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such resident, the secretary of social and rehabilitation services may seek to obtain an injunction enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The petition in such action shall allege specific facts sufficient to show that the resident is in need of protective services and consents to their provision and that the caretaker or legal representative, or both, refuses to allow the provision of such services. If the judge, by clear and convincing evidence, finds that the resident is in need of protective services and has been prevented by the caretaker or legal representative, or both, from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The court may appoint a new legal representative if the court deems that it is in the best interest of the resident.

History: Laws 1980, ch. 124, § 5; Laws 1990, ch. 153, § 5; Laws 2003, ch. 91, § 6; Laws 2003, ch. 149, § 28.

39-1406. Same; persons authorized access to relevant records; authority to take actions to assist residents. Any person, department or agency authorized to carry out the duties enumerated in this act, including investigating law enforcement agencies and the long-term care ombudsman shall have access to all relevant records. The authority of the secretary of social and rehabilitation services, the secretary of health and environment, and the secretary of aging under this act shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any resident, subject to any specific requirement for individual consent of the resident.

History: Laws 1980, ch. 124, § 6; Laws 1990, ch. 153, § 6; Laws 2003, ch. 91, § 7; Laws 2003, ch. 149, § 29.

39-1407. Consent of resident to protective services; court authorization. If a resident does not consent to the receipt of reasonable and necessary protective services, or if such person withdraws the consent, such services shall not be provided or continued, except that if the secretary of social and rehabilitation services has reason to believe that such resident lacks capacity to consent, the secretary may seek court authorization to provide necessary services, as provided in K.S.A. 39-1408, and amendments thereto.

History: Laws 1980, ch. 124, § 7; Laws 2003, ch. 91, § 8.

39-1408. Same; petition for appointment of guardian or conservator; appointment of attorney to represent resident, when. (a) If the secretary of social and rehabilitation services finds that a resident is being or has been abused, neglected or exploited or is in a condition which is the result of such abuse, neglect or exploitation and lacks capacity to consent to reasonable and necessary protective services, the secretary may petition the district court for appointment of a guardian or conservator, or both, for the resident pursuant to the provisions of the act for obtaining a guardian or conservator, or both, in order to obtain such consent.

(b) In any proceeding in district court pursuant to provisions of this act, the district court shall appoint an attorney to represent the resident if the resident is without other legal representation.

History: Laws 1980, ch. 124, § 8; Laws 1990, ch. 153, § 7; Laws 2003, ch. 91, § 9.

39-1409. Same; assistance of appropriate public or private agencies, groups or individuals. In performing the duties set forth in this act, the secretary of social and rehabilitation services, the secretary of health and environment, the secretary of aging or an appropriate law enforcement agency may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health departments and may utilize any other public or private agency, group or individual who is appropriate and who may be available to assist such department or agency in the investigation and determination of whether a resident is being, or has been, abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation, except that any internal investigation conducted by any caretaker under investigation shall be limited to the least serious category of report as specified by the secretary of health and environment, the secretary of aging or the secretary of social and rehabilitation services, as applicable.

History: Laws 1980, ch. 124, § 9; Laws 1990, ch. 153, § 8; Laws 1998, ch. 200, § 7; Laws 2003, ch. 91, § 10; Laws 2003, ch. 149, § 30.

39-1410. Review subsequent to authorization of protective services; continuation of protective services; reevaluations. Subsequent to the authorization for the provision of necessary protective services, the secretary of social and rehabilitation services shall initiate a review of each case within forty-five (45) days, to determine whether continuation of, or modification in, the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from other involved state and local groups, agencies and departments, and

shall comply with the consent provisions of this act. Reevaluations of such case shall be made not less than every six months thereafter.

History: Laws 1980, ch. 124, § 10.

39-1411. Register of reports; findings forwarded to certain state regulatory authorities; consideration of findings; certain information confidential and not subject to open records act; disclosure of certain individuals prohibited. (a) The secretary of aging shall maintain a register of the reports received and investigated by the department on aging under K.S.A. 39-1402 and 39-1403, and amendments to such sections, and the findings, evaluations and actions recommended by the department on aging with respect to such reports. The secretary of health and environment shall maintain a register of the reports received and investigated by the department of health and environment under K.S.A. 39-1402 and 39-1403, and amendments thereto, and the findings, evaluations and actions recommended by the department of health and environment with respect to such reports. The findings, evaluations and actions shall be subject to the Kansas administrative procedure act and any requirements of state or federal law relating thereto except that the secretary shall not be required to conduct a hearing in cases forwarded to the appropriate state authority under subsection (b). The register shall be available for inspection by personnel of the department of health and environment or the department on aging as specified by the secretary of health and environment or the secretary of aging and to such other persons as may be required by federal law and designated by the secretary of health and environment or the secretary of aging by rules and regulations. Information from the register shall be provided as specified in K.S.A. 65-6205, and amendments thereto.

(b) The secretary of aging shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The secretary of health and environment shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The appropriate state regulatory authority, after notice to the alleged perpetrator and a hearing on such matter if requested by the alleged perpetrator, may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority. The secretary of aging may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any adult care home or medical care facility under the jurisdiction of the secretary of aging. The secretary of health and environment may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any medical care facility under the jurisdiction of the secretary of health and environment.

(c) If the investigation of the department of health and environment or the department on aging indicates reason to believe that the resident is in need of protective services, that finding and all information relating to that finding shall be forwarded by the secretary of health and environment or the secretary of aging to the secretary of social and rehabilitation services.

(d) Except as otherwise provided in this section, the report received by the department of health and environment or the department on aging and the written findings, evaluations and actions recommended shall be confidential and shall not be subject to the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of health and environment or the department on aging or any person mentioned in such

report shall not be disclosed unless such person specifically requests or agrees in writing to such disclosure or unless a judicial or administrative proceeding results therefrom. In the event that an administrative or judicial action arises, no use of the information shall be made until the judge or presiding officer makes a specific finding, in writing, after a hearing, that under all the circumstances the need for the information outweighs the need for confidentiality. Except as otherwise provided in this section, no information contained in the register shall be made available to the public in such a manner as to identify individuals.

History Laws 1990, ch. 153, § 9; Laws 1991, ch. 121, § 1; Laws 1997, ch. 161, § 6; Laws 2000, ch. 146, § 1; Laws 2003, ch. 149, § 31.

39-1412. Transfer of certain powers, duties and functions of secretary of health and environment to secretary of aging; preservation of certain actions. (a) On July 1, 2003, certain powers, duties and functions of the secretary of health and environment under K.S.A.39-1401 through 39-1411, and amendments thereto, are hereby transferred from the secretary of health and environment to the secretary of aging, as provided by this act.

(b) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such program. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the date the pertinent program is transferred or on any date thereafter.

(c) No suit, action or other proceeding, judicial or administrative, pertaining to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(d) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-1401 et seq., and amendments thereto, or the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto, currently pertaining to reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

History: Laws 2003, ch. 149, § 25; Laws 2010, ch. 17, § 65, eff. July 1, 2010.

Kansas Administrative Regulations Common to All Adult Care Homes

Current through Volume 32, No. 30 July 25, 2013

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26-39-100. Definitions.

The following terms and definitions shall apply to all of the department's regulations governing adult care homes:

(a) "Activities director" means an individual who meets at least one of the following requirements:

- (1) Has a degree in therapeutic recreation;
- (2) is licensed in Kansas as an occupational therapist or occupational therapy assistant;
- (3) has a bachelor's degree in a therapeutic activity field in art therapy, horticultural therapy, music therapy, special education, or a related therapeutic activity field;
- (4) is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body;

(5) has two years of experience in a social or recreational program within the last five years, one of which was full-time in an activities program in a health care setting; or

(6) has completed a course approved by the Kansas department of health and environment in resident activities coordination and receives consultation from a therapeutic recreation specialist, an occupational therapist, an occupational therapy assistant, or an individual with a bachelor's degree in art therapy, music therapy, or horticultural therapy.

(b) "Addition" means an increase in the building area, aggregate floor area, or number of stories of an adult care home.

(c) "Administrator" means an individual who is responsible for the general administration of an adult care home, whether or not the individual has an ownership interest in the adult care home. Each administrator of an adult care home shall be licensed in accordance with K.S.A. 65-3501 et seq. and amendments thereto.

(d) "Adult care home" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(e) "Adult day care" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(f) "Advanced registered nurse practitioner" means an individual who is certified by the Kansas board of nursing as an advanced registered nurse practitioner.

(g) "Ambulatory resident" means any resident who is physically and mentally capable of performing the following without the assistance of another person:

- (1) Getting in and out of bed; and
- (2) walking between locations in the living environment.

(h) "Applicant" means any individual, firm, partnership, corporation, company, association, or joint stock association requesting a license to operate an adult care home.

(i) "Assisted living facility" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(j) "Audiologist" means an individual who is licensed by the Kansas department of health and environment as an audiologist.

(k) "Basement" means the part of a building that is below grade.

(l) "Biologicals" means medicinal preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(m) "Boarding care home" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(n) "Case manager" means an individual assigned to a resident to provide assistance in access and coordination of information and services in a program authorized by the Kansas department on aging, the Kansas department of social and rehabilitation services, or the Kansas health policy authority.

(o) "Change of ownership" means any transaction that results in a change of control over the capital assets of an adult care home.

(p) "Chemical restraint" means a medication or biological that meets the following conditions:

- (1) Is used to control a resident's behavior or restrict a resident's freedom of movement; and
- (2) is not a standard treatment for a resident's medical or psychiatric condition.

(q) "Clinical record" means the record that includes all the information and entries reflecting each resident's course of stay in an adult care home.

(r) "Contaminated laundry" means any clothes or linens that have been soiled with body substances including blood, stool, urine, vomitus, or other potentially infectious material.

(s) "Controlled substance" means any medication, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, K.S.A. 65-4107, K.S.A. 65-4109, K.S.A. 65-4111, and K.S.A. 65-4113, and amendments thereto.

(t) "Day shift" means any eight-hour to 12-hour work period that occurs between the hours of 6 a.m. and 9 p.m.

(u) "Department" means the Kansas department on aging.

(v) "Dietetic services supervisor" means an individual who meets one of the following requirements:

- (1) Is licensed in Kansas as a dietitian;
- (2) has an associate's degree in dietetic technology from a program approved by the American dietetic association;
- (3) is a dietary manager who is certified by the board of the dietary managers' association; or
- (4) has training and experience in dietetic services supervision and management that are determined by the Kansas department on aging to be equivalent in content to the requirement specified in paragraph (2) or (3) of this subsection.

(w) "Dietitian" means an individual who is licensed by the Kansas department of health and environment as a dietitian.

(x) "Direct care staff" means the individuals employed by or working under contract for an adult care home who assist residents in activities of daily living. These activities may include the following:

- (1) Ambulating;
- (2) bathing;
- (3) bed mobility;
- (4) dressing;

- (5) eating;
- (6) personal hygiene;
- (7) toileting; and
- (8) transferring.

(y) "Director of nursing" means a position in a nursing facility or a nursing facility for mental health that is held by one or more individuals who meet the following requirements:

(1) Each individual shall be licensed in Kansas as a registered professional nurse.

(2) If only one individual serves in this position, the individual shall be employed at least 35 hours each week.

(3) If more than one individual serves in this position, the individuals shall be employed collectively for a total of at least 40 hours each week.

(4) Each individual shall have the responsibility, administrative authority, and accountability for the supervision of nursing care provided to residents in the nursing facility or the nursing facility for mental health.

(z) "Full-time" means 35 or more hours each week.

(aa) "Health information management practitioner" means an individual who is certified as a registered health information administrator or a registered health information technician by the American health information management association.

(bb) "Home plus" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(cc) "Interdisciplinary team" means the following group of individuals:

(1) A registered nurse with responsibility for the care of the residents; and

(2) other appropriate staff, as identified by resident comprehensive assessments, who are responsible for the development of care plans for residents.

(dd) "Intermediate care facility for the mentally retarded" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(ee) "Legal representative" means an agent acting within the bounds of the agent's legal authority who meets any of the following criteria:

(1) Has been designated by a resident to serve as the resident's trustee, power of attorney, durable power of attorney, or power of attorney for health care decisions;

(2) is a court-appointed guardian or conservator authorized to act on behalf of the resident in accordance with K.S.A. 59-3051 et seq. and amendments thereto; or

(3) if the resident is a minor, is either of the following:

(A) A natural guardian, as defined in K.S.A. 59-3051 and amendments thereto; or

(B) a court-appointed guardian, conservator, trustee, or an individual or agency vested with custody of the minor pursuant to the revised Kansas code for care of children, K.S.A. 38-2201 through 38-2283, and amendments thereto, or the revised Kansas juvenile justice code, K.S.A. 38-2301 through 38-2387, and amendments thereto.

(ff) "Licensed mental health technician" means an individual licensed by the Kansas board of nursing as a licensed mental health technician.

(gg) "Licensed nurse" means an individual licensed by the Kansas board of nursing as a registered professional nurse or licensed practical nurse.

(hh) "Licensed practical nurse" means an individual who is licensed by the Kansas board of nursing as a licensed practical nurse and is supervised by a registered professional nurse, in accordance with K.S.A. 65-1113 and amendments thereto.

(ii) "Licensee" means an individual, firm, partnership, association, company, corporation, or joint stock association authorized by a license obtained from the secretary of aging to operate an adult care home.

(jj) "Medical care provider" means any of the following individuals:

(1) A physician licensed by the Kansas board of healing arts to practice medicine and surgery in accordance with K.S.A. 65-28,102 and amendments thereto;

(2) a physician assistant who is licensed by the Kansas board of healing arts in accordance with K.S.A. 65-28a02 and amendments thereto and who provides health care services under the direction and supervision of a responsible physician; or

(3) an advanced registered nurse practitioner who is licensed by the Kansas board of nursing in accordance with K.S.A. 65-1113 and amendments thereto and who provides health care services in accordance with article 11 of the Kansas board of nursing's regulations.

(kk) "Medication" means any "drug" as defined by K.S.A. 65-1626 and amendments thereto.

(ll) "Medication administration" means an act in which a single dose of a prescribed medication or biological is given by application, injection, inhalation, ingestion, or any other means to a resident by an authorized person in accordance with all laws and regulations governing the administration of medications and biologicals. Medication administration shall consist of the following:

(1) Removing a single dose from a labeled container, including a unit-dose container;

(2) verifying the medication and dose with the medical care provider's orders;

(3) administering the dose to the proper resident; and

(4) documenting the dose in the resident's clinical record.

(mm) "Medication aide" means an individual who has a medication aide certificate issued by the Kansas department of health and environment according to K.A.R. 28-39-169b and is supervised by a licensed nurse.

(nn) "Medication dispensing" means the delivery of one or more doses of a medication by a licensed pharmacist or physician. The medication shall be dispensed in a container and labeled in compliance with state and federal laws and regulations.

(oo) "Non-ambulatory resident" means any resident who is not physically or mentally capable of performing the following without the assistance of another person:

(1) Getting in and out of bed; and

(2) walking between locations in the living environment.

(pp) "Nurse aide" means an individual who has a nurse aide certificate issued by the Kansas department of health and environment according to K.A.R. 28-39-165 and is supervised by a licensed nurse.

(qq) "Nurse aide trainee" means an individual who is in the process of completing a nurse aide training program as specified in K.A.R. 28-39-165 or K.A.R. 28-39-167 and has not been issued a nurse aide certificate by the Kansas department of health and environment.

(rr) "Nursing facility" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(ss) "Nursing facility for mental health" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(tt) "Nursing personnel" means all of the following:

- (1) Registered professional nurses;
- (2) licensed practical nurses;
- (3) licensed mental health technicians in nursing facilities for mental health;
- (4) medication aides;
- (5) nurse aides;
- (6) nurse aide trainees; and
- (7) paid nutrition assistants.

(uu) "Nursing unit" means a distinct area of a nursing facility serving not more than 60 residents and including the service areas and rooms described in K.A.R. 26-40-302 and K.A.R. 26-40-303.

(vv) "Occupational therapist" means an individual who is licensed with the Kansas board of healing arts as an occupational therapist.

(ww) "Occupational therapy assistant" means an individual who is licensed by the Kansas board of healing arts as an occupational therapy assistant.

(xx) "Operator" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(yy) "Paid nutrition assistant" has the meaning specified in K.S.A. 39-923 and amendments thereto. In addition, each paid nutrition assistant shall meet the following requirements:

(1) Have successfully completed a nutrition assistant course approved by the Kansas department of health and environment;

(2) provide assistance with eating to residents of an adult care home based on an assessment by the supervising licensed nurse, the resident's most recent minimum data set assessment or functional capacity screening, and the resident's current care plan or negotiated service agreement;

(3) provide assistance with eating to residents who do not have complicated eating problems, including difficulty swallowing, recurrent lung aspirations, and tube, parenteral, or intravenous feedings;

(4) be supervised by a licensed nurse on duty in the facility; and

(5) contact the supervising licensed nurse verbally or on the resident call system for help in case of an emergency.

(zz) "Personal care" means assistance provided to a resident to enable the resident to perform activities of daily living, including ambulating, bathing, bed mobility, dressing, eating, personal hygiene, toileting, and transferring.

(aaa) "Pharmacist" has the meaning specified in K.S.A. 65-1626 and amendments thereto.

(bbb) "Physical restraint" means any method or any physical device, material, or equipment attached or adjacent to the resident's body and meeting the following criteria:

- (1) Cannot be easily removed by the resident; and
- (2) restricts freedom of movement or normal access to the resident's body.

(ccc) "Physical therapist" means an individual who is licensed by the Kansas board of healing arts as a physical therapist.

(ddd) "Physical therapy assistant" means an individual who is certified by the Kansas board of healing arts as a physical therapy assistant.

(eee) "Physician" has the meaning specified in K.S.A. 65-28,102 and amendments thereto.

(fff) "Psychopharmacologic drug" means any medication prescribed with the intent of controlling mood, mental status, or behavior.

(ggg) "Registered professional nurse" means an individual who is licensed by the Kansas state board of nursing as a registered professional nurse.

(hhh) "Renovation" means a change to an adult care home that affects the building's structural integrity or life safety system.

(iii) "Resident" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(jjj) "Resident capacity" means the number of an adult care home's beds or adult day care slots, as licensed by the Kansas department on aging.

(kkk) "Residential health care facility" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(lll) "Respite care" means the provision of services to a resident on an intermittent basis for periods of fewer than 30 days at any one time.

(mmm) "Restraint" is the control and limitation of a resident's movement by physical, mechanical, or chemical means.

(nnn) "Sanitization" means effective bactericidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on utensils and equipment.

(ooo) "Secretary" means the secretary of the department on aging.

(ppp) "Self-administration of medication" means the determination by a resident of when to take a medication or biological and how to apply, inject, inhale, ingest, or take a medication or biological by any other means, without assistance from nursing staff.

(qqq) "Significant change in condition" means a decline or improvement in a resident's mental, psychosocial, or physical functioning that requires a change in the resident's comprehensive plan of care or negotiated service agreement.

(rrr) "Social services designee" means an individual who meets at least one of the following qualifications:

- (1) Is licensed by the Kansas behavioral sciences regulatory board as a social worker;
- (2) has a bachelor's degree in a human service field, including social work, sociology, special education, rehabilitation counseling, or psychology, and receives supervision from a licensed social worker; or

(3) has completed a course in social services coordination approved by the Kansas department of health and environment and receives supervision from a licensed social worker on a regular basis.

(sss) "Social worker" means an individual who is licensed by the Kansas behavioral sciences regulatory board as a social worker.

(ttt) "Speech-language pathologist" means an individual who is licensed by the Kansas department of health and environment as a speech-language pathologist.

(uuu) "Working day" means any day other than a Saturday, Sunday, or day designated as a holiday by the United States congress or the Kansas legislature or governor.

History: (Authorized by K.S.A. 39-932; implementing K.S.A. 2009 Supp. 39-923 and K.S.A. 39-932; effective May 22, 2009; amended Jan.

26-39-101. Licensure of adult care homes. (a) Initiation of application process.

(1) Each applicant for a license to operate an adult care home shall submit a letter of intent to the department.

(2) The letter of intent shall include all of the following information:

- (A) The type of adult care home license being requested;
- (B) the name, address, and telephone number of the applicant; and
- (C) the street address or legal description of the proposed site.

(b) Initial licensure application.

(1) Each applicant for an initial license shall submit the following to the department:

- (A) A completed application on a form prescribed by the department;
- (B) a copy of each legal document identifying ownership and control, including applicable deeds, leases, and management agreements;
- (C) any required approval of other owners or mortgagors;
- (D) curriculum vitae or resumes of all facility and corporate staff responsible for the operation and supervision of the business affairs of the facility;
- (E) a complete list of names and addresses of facilities that the applicant operates in states other than Kansas; and

(F) a financial statement projecting the first month's operating income and expenses with a current balance sheet showing at least one month's operating expenses in cash or owner's equity. All financial statements shall be prepared according to generally accepted accounting principles and certified by the applicant to be accurate.

(2) A license shall be issued by the department if all of the following requirements are met:

- (A) A licensure application has been completed by the applicant.
- (B) Construction of the facility or phase is completed.
- (C) The facility is found to meet all applicable requirements of the law.
- (D) The applicant is found to qualify for a license under K.S.A. 39-928 and amendments thereto.

(c) Change of ownership or licensee.

(1) The current licensee shall notify the department, in writing, of any anticipated change in the information that is recorded on the current license at least 60 days before the proposed effective date of change.

(2) Each applicant proposing to purchase, lease, or manage an adult care home shall submit the following information, if applicable, to the department:

(A) A completed application form prescribed by the department;

(B) a copy of each legal document transferring ownership or control, including sales contracts, leases, deeds, and management agreements;

(C) any required approval of other owners or mortgagors;

(D) curriculum vitae or resumes of all facility and corporate staff responsible for the operation and supervision of the business affairs of the facility;

(E) a complete list of names and addresses of facilities the applicant operates in states other than Kansas; and

(F) a financial statement projecting the first month's operating income and expenses with a current balance sheet showing at least one month's operating expenses in cash or owner's equity. All financial statements shall be prepared according to generally accepted accounting principles and certified by the applicant as accurate.

(3) A new license shall be issued by the department if a complete application and the required forms have been received and the applicant is found to qualify for a license under K.S.A. 39-928 and amendments thereto.

(d) New construction or conversion of an existing unlicensed building to an adult care home.

(1) Each applicant for a nursing facility, intermediate care facility for the mentally retarded, assisted living facility, or residential health care facility shall request approval of the site at least 30 days before construction begins. The written request for site approval shall include all of the following information:

(A) The name and telephone number of the individual to be contacted by evaluation personnel;

(B) the dimensions and boundaries of the site; and

(C) the name of the public utility or municipality that provides services to the site, including water, sewer, electricity, and natural gas.

(2) Intermediate care facilities for the mentally retarded shall not have more than one residential building with 16 beds or less located on one site or on contiguous sites. The residential buildings shall be dispersed geographically to achieve integration and harmony with the community or neighborhoods in which the buildings are located.

(3) The applicant shall submit one copy of the final plans for new construction or conversion of an existing unlicensed building, for the entire project or phase to be completed, which shall be sealed, signed, and certified by a licensed architect to be in compliance with the following regulations:

(A) For a nursing facility, K.A.R. 26-40-301 through K.A.R. 26-40-305;

(B) for an intermediate care facility for the mentally retarded with 16 beds or less, K.A.R. 28-39-225;

(C) for an intermediate care facility for the mentally retarded with 17 or more beds, K.A.R. 26-40-301 through K.A.R. 26-40-305 governing the physical environment of nursing facilities; and

(D) for an assisted living facility or a residential health care facility, K.A.R. 28-39-254 through K.A.R. 28-39-256.

(4) The applicant shall provide the department with a 30-day notice of each of the following:

(A) The date on which the architect estimates that 50 percent of the construction will be completed; and

(B) the date on which the architect estimates that all construction will be completed.

(5) The applicant for new construction or conversion of an existing unlicensed building to a home plus, boarding care home, or adult day care facility shall submit a drawing of the proposed facility that includes identification and dimensions of rooms or areas as required in the following regulations:

(A) For a home plus, K.A.R. 28-39-437;

(B) for a boarding care home, K.A.R. 28-39-411; and

(C) for an adult day care facility, K.A.R. 28-39-289 through K.A.R. 28-39-291.

(6) The applicant shall submit to the department any changes from the plans, specifications, or drawings on file at the department.

(e) Additions and renovations.

(1) The licensee shall submit one copy of final plans, which shall be sealed, signed, and certified by a licensed architect to be in compliance with the following regulations:

(A) For a nursing facility, K.A.R. 26-40-301 through K.A.R. 26-40-305;

(B) for an intermediate care facility for the mentally retarded with 16 beds or less, K.A.R. 28-39-225;

(C) for an intermediate care facility for the mentally retarded with 17 or more beds, K.A.R. 26-40-301 through K.A.R. 26-40-305 governing the physical environment of nursing facilities;

(D) for an assisted living facility or a residential health care facility, K.A.R. 28-39-254 through K.A.R. 28-39-256; and

(E) for a nursing facility for mental health, K.A.R. 28-39-227.

(2) The licensee shall submit to the department a 30-day notice for each of the following:

(A) The date on which the architect estimates that 50 percent of the construction will be completed;

(B) the date on which the architect estimates all construction will be completed; and

(C) any changes in the plans or specifications information for the addition or renovation.

(f) Change in use of a required room or area. If an administrator or operator changes resident bedrooms, individual living units, and apartments used for an alternative purpose back to resident bedrooms, individual living units, and apartments, the administrator or operator shall obtain the secretary's approval before the change is made.

(g) Change of resident capacity. Each licensee shall submit a written request for any proposed change in resident capacity to the department. The effective date of a change in resident capacity shall be the first day of the month following department approval.

(h) Change of administrator, director of nursing, or operator. Each licensee of an adult care home shall notify the department within two working days if there is a change in administrator, director of nursing, or operator. When a new administrator or director of nursing is employed, the licensee shall notify the department of the name, address, and Kansas license number of the new administrator or director of nursing. When a new operator is employed, the licensee shall notify the department of the name and address of the new operator and provide evidence that the individual has completed the operator course as specified by the secretary of the Kansas department of health and environment pursuant to K.S.A. 39-923 and amendments thereto.

(i) Administrator or operator supervision of multiple homes. An administrator or operator may supervise more than one separately licensed adult care home if the following requirements are met:

(1) Each licensee shall request prior authorization from the department for a licensed administrator or an operator to supervise more than one separately licensed adult care home. The request shall be submitted on the appropriate form and include assurance that the lack of full-time, on-site supervision of the adult care homes will not adversely affect the health and welfare of residents.

(2) All of the adult care homes shall be located within a geographic area that allows for daily on-site supervision of all of the adult care homes by the administrator or operator.

(3) The combined resident capacities of separately licensed nursing facilities, assisted living facilities, residential health care facilities, homes plus, and adult day care facilities shall not exceed 120 for a licensed administrator.

(4) The combined resident capacities of separately licensed assisted living facilities, residential health care facilities, homes plus, and adult day care facilities shall not exceed 60 for an operator.

(5) The combined number of homes plus shall not exceed four homes for a licensed administrator or an operator.

(j) Reports. Each licensee shall file reports with the department on forms and at times prescribed by the department.

(k) Fees. Each initial application for a license and each annual report filed with the department shall be accompanied by a fee of \$30.00 for each resident in the stated resident capacity plus \$100.00. Each requested change in resident capacity shall be accompanied by a fee of \$30.00 for each resident increase or decrease in the stated resident capacity plus \$100.00. No refund of the fee shall be made if a license application is denied.

History: (Authorized by K.S.A. 2009 Supp. 39-930, K.S.A. 39-932, and K.S.A. 39-933; implementing K.S.A. 39-927, K.S.A. 2009 Supp. 39-930, K.S.A. 39-932, and K.S.A. 39-933; effective May 22, 2009; amended Jan. 7, 2011.)

26-39-102. Admission, transfer, and discharge rights of residents in adult care homes. (a) Each licensee, administrator, or operator shall develop written admission policies regarding the admission of residents. The admission policy shall meet the following requirements:

(1) The administrator or operator shall ensure the admission of only those individuals whose physical, mental, and psychosocial needs can be met within the accommodations and services available in the adult care home.

(A) Each resident in a nursing facility or nursing facility for mental health shall be admitted under the care of a physician licensed to practice in Kansas.

(B) The administrator or operator shall ensure that no children under the age of 16 are admitted to the adult care home.

(C) The administrator or operator shall allow the admission of an individual in need of specialized services for mental illness to the adult care home only if accommodations and treatment that will assist that individual to achieve and maintain the highest practicable level of physical, mental, and psychosocial functioning are available.

(2) Before admission, the administrator or operator, or the designee, shall inform the prospective resident or the resident's legal representative in writing of the rates and charges for the adult care home's services and of the resident's obligations regarding payment. This information shall include the refund policy of the adult care home.

(3) At the time of admission, the administrator or operator, or the designee, shall execute with the resident or the resident's legal representative a written agreement that describes in detail the services and goods the resident will receive and specifies the obligations that the resident has toward the adult care home.

(4) An admission agreement shall not include a general waiver of liability for the health and safety of residents.

(5) Each admission agreement shall be written in clear and unambiguous language and printed clearly in black type that is 12-point type or larger.

(b) At the time of admission, adult care home staff shall inform the resident or the resident's legal representative, in writing, of the state statutes related to advance medical directives.

(1) If a resident has an advance medical directive currently in effect, the facility shall keep a copy on file in the resident's clinical record.

(2) The administrator or operator, or the designee, shall ensure the development and implementation of policies and procedures related to advance medical directives.

(c) The administrator or operator, or the designee, shall provide a copy of resident rights, the adult care home's policies and procedures for advance medical directives, and the adult care home's grievance policy to each resident or the resident's legal representative before the prospective resident signs any admission agreement.

(d) The administrator or operator of each adult care home shall ensure that each resident is permitted to remain in the adult care home and is not transferred or discharged from the adult care home unless one of the following conditions is met:

(1) The transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the current adult care home.

(2) The safety of other individuals in the adult care home is endangered.

(3) The health of other individuals in the adult care home is endangered.

(4) The resident has failed, after reasonable and appropriate notice, to pay the rates and charges imposed by the adult care home.

(5) The adult care home ceases to operate.

(e) Before a resident is transferred or discharged involuntarily, the administrator or operator, or the designee, shall perform the following:

(1) Notify the resident, the resident's legal representative, and if known, a designated family member of the transfer or discharge and the reasons; and

(2) record the reason for the transfer or discharge under any of the circumstances specified in paragraphs (d) (1) through (4) in the resident's clinical record, which shall be substantiated as follows:

(A) The resident's physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met by the adult care home;

(B) the resident's physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the adult care home; and

(C) a physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is necessary because the health or safety of other individuals in the adult care home is endangered.

(f) The administrator or operator, or the designee, shall provide a notice of transfer or discharge in writing to the resident or resident's legal representative at least 30 days before the resident is transferred or discharged involuntarily, unless one of the following conditions is met:

(1) The safety of other individuals in the adult care home would be endangered.

(2) The resident's urgent medical needs require an immediate transfer to another health care facility.

(g) Each written transfer or discharge notice shall include the following:

(1) The reason for the transfer or discharge;

(2) the effective date of the transfer or discharge;

(3) the address and telephone number of the complaint program of the Kansas department on aging where a complaint related to involuntary transfer or discharge can be registered;

(4) the address and telephone number of the state long-term care ombudsman; and

(5) for residents who have developmental disabilities or who are mentally ill, the address and telephone number of the Kansas advocacy and protection organization.

(h) The administrator or operator, or the designee, shall provide sufficient preparation and orientation to each resident before discharge to ensure a safe and orderly transfer and discharge from the adult care home.

(i) The administrator or operator, or the designee, shall ensure the development of a discharge plan, with the involvement of the resident, the resident's legal representative, and designated family when practicable.

(j) If the resident is transferred or discharged to another health care facility, the administrator or operator, or the designee, shall ensure that sufficient information accompanies the resident to ensure continuity of care in the new facility.

(k) Before a resident in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, or home plus is transferred to a hospital or goes on therapeutic leave, the administrator or operator, or the designee, shall provide written information to the resident or the resident's legal representative and, if agreed to by the resident or the resident's legal representative, the resident's family, that specifies the following:

(1) The period of time during which the resident is permitted to return and resume residence in the facility;

(2) the cost to the resident, if any, to hold the resident's bedroom, apartment, individual living unit, or adult day care slot until the resident's return; and

(3) a provision that when the resident's hospitalization or therapeutic leave exceeds the period identified in the policy of a nursing facility, the resident will be readmitted to the nursing facility upon the first availability of a comparable room if the resident requires the services provided by the nursing facility.

History: (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009.)

26-39-103. Resident rights in adult care homes. (a) Protection and promotion of resident rights. Each administrator or operator shall ensure the protection and promotion of the rights of each resident as set forth in this regulation. Each resident shall have a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the adult care home.

(b) Exercise of rights.

(1) The administrator or operator shall ensure that each resident is afforded the right to exercise the resident's rights as a resident of the adult care home and as a citizen.

(2) The administrator or operator shall ensure that each resident is afforded the right to be free from interference, coercion, discrimination, or reprisal from adult care home staff in exercising the resident's rights.

(3) If a resident is adjudged incompetent under the laws of the state of Kansas, the resident's legal representative shall have the power to exercise rights on behalf of the resident.

(4) In the case of a resident who has executed a durable power of attorney for health care decisions, the agent may exercise the rights of the resident to the extent provided by K.S.A. 58-625 et seq. and amendments thereto.

(c) Notice of rights and services.

(1) Before admission, the administrator or operator shall ensure that each resident or the resident's legal representative is informed, both orally and in writing, of the following in a language the resident or the resident's legal representative understands:

(A) The rights of the resident;

(B) the rules governing resident conduct and responsibility;

(C) the current rate for the level of care and services to be provided; and

(D) if applicable, any additional fees that will be charged for optional services.

(2) The administrator or operator shall ensure that each resident or the resident's legal representative is notified in writing of any changes in charges or services that occur after admission and at least 30 days before the effective date of the change. The changes shall not take place until notice is given, unless the change is due to a change in level of care.

(d) Inspection of records.

(1) The administrator or operator shall ensure that each resident or resident's legal representative is afforded the right to inspect records pertaining to the resident. The administrator or operator, or the designee, shall provide a photocopy of the resident's record or requested sections of the resident's record to each resident or resident's legal representative within two working days of the request. If a fee is charged for the copy, the fee shall be reasonable and not exceed actual cost, including staff time.

(2) The administrator or operator shall ensure access to each resident's records for inspection and photocopying by any representative of the department.

(e) Informed of health status. The administrator or operator shall ensure that each resident and the resident's legal representative are afforded the right to be fully informed of the resident's total health status, including the resident's medical condition.

(f) Free choice. The administrator or operator shall ensure that each resident, or resident's legal representative on behalf of the resident, is afforded the right to perform the following:

(1) Choose a personal attending physician;

(2) participate in the development of an individual care plan or negotiated service agreement;

(3) refuse treatment;

(4) refuse to participate in experimental research; and

(5) choose the pharmacy where prescribed medications are purchased. If the adult care home uses a unit-dose or similar medication distribution system, the resident shall have the right to choose among pharmacies that offer or are willing to offer the same or a compatible system.

(g) Management of financial affairs. The administrator or operator shall ensure that each resident is afforded the right to manage personal financial affairs and is not required to deposit personal funds with the adult care home.

(h) Notification of changes.

(1) The administrator or operator shall ensure that designated facility staff inform the resident, consult with the resident's physician, and notify the resident's legal representative or designated family member, if known, upon occurrence of any of the following:

(A) An accident involving the resident that results in injury and has the potential for requiring a physician's intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status;

(C) a need to alter treatment significantly; or

(D) a decision to transfer or discharge the resident from the adult care home.

(2) The administrator or operator shall ensure that a designated staff member informs the resident, the resident's legal representative, or authorized family members whenever the designated staff member learns that the resident will have a change in room or roommate assignment.

(i) Privacy and confidentiality. The administrator or operator shall ensure that each resident is afforded the right to personal privacy and confidentiality of personal and clinical records.

(1) The administrator or operator shall ensure that each resident is provided privacy during medical and nursing treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(2) The administrator or operator shall ensure that the personal and clinical records of the resident are maintained in a confidential manner.

(3) The administrator or operator shall ensure that a release signed by the resident or the resident's legal representative is obtained before records are released to anyone outside the adult care home, except in the case of transfer to another health care institution or as required by law.

(j) Grievances. The administrator or operator shall ensure that each resident is afforded the right to the following:

(1) Voice grievances with respect to treatment or care that was or was not furnished;

(2) be free from discrimination or reprisal for voicing the grievances; and

(3) receive prompt efforts by the administrator or operator, or the designee, to resolve any grievances that the resident could have, including any grievance with respect to the behavior of other residents.

(k) Work.

(1) The administrator or operator shall ensure that each resident is afforded the right to refuse to perform services for the adult care home.

(2) A resident may perform services for the adult care home, if the resident wishes and if all of the following conditions are met:

(A) The administrator or operator, or the designee, has documented the resident's need or desire for work in the plan of care or negotiated service agreement.

(B) The plan of care or negotiated service agreement specifies the nature of the services performed and whether the services are voluntary or paid.

(C) The resident or resident's legal representative has signed a written agreement consenting to the work arrangement described in the plan of care or negotiated service agreement.

(l) Mail. The administrator or operator shall ensure that each resident is afforded the right to privacy in written communications, including the right to the following:

- (1) Have unopened mail sent and received promptly; and
 - (2) have access to stationery, postage, and writing implements at the resident's own expense.
- (m) Access and visitation rights.

(1) The administrator or operator shall ensure the provision of immediate access to any resident by the following:

- (A) Any representative of the secretary of the Kansas department on aging;
- (B) the resident's attending medical care provider;
- (C) the state long-term care ombudsman;
- (D) any representative of the secretary of the Kansas department of social and rehabilitation services;
- (E) immediate family or other relatives of the resident; and
- (F) others who are visiting with the consent of the resident subject to reasonable restrictions.

(2) The administrator or operator shall ensure that each resident is afforded the right to deny or withdraw visitation consent for any person at any time.

(n) Telephone. The administrator or operator shall ensure that each resident is afforded the right to reasonable access to a telephone in a place where calls can be made without being overheard.

(o) Personal property. The administrator or operator shall ensure that each resident is afforded the right to retain and use personal possessions, including furnishings and appropriate clothing as space permits, unless doing so would infringe upon the rights or health and safety of other residents.

(p) Married couples. The administrator or operator shall ensure that each resident is afforded the right to share a room with the resident's spouse if married residents live in the same adult care home and both spouses consent.

(q) Self-administration of medication. The administrator shall ensure that each resident in a nursing facility or a nursing facility for mental health is afforded the right to self-administer medications unless the resident's attending physician and the interdisciplinary team have determined that this practice is unsafe. In any assisted living facility, residential health care facility, home plus, or adult day care facility, a resident may self-administer medication if a licensed nurse has determined that the resident can perform this function safely and accurately.

History; (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009.)

26-39-104. Receivership of adult care homes. (a) A person may be designated by the secretary to be a receiver if that person meets the following requirements:

- (1) Has operated a Kansas adult care home for at least five consecutive years; and
- (2) has a history of compliance with licensure standards.

(b) A person designated as a receiver shall not use the designation for any commercial purpose.

History: (Authorized by and implementing K.S.A. 2007 Supp. 39-954; effective May 22, 2009.)

26-39-105. Adoptions by reference. (a) The following material shall apply to all adult care homes except nursing facilities for mental health, intermediate care facilities for the mentally retarded, and boarding care homes:

(1) Dietary guidelines. In the “dietary guidelines for Americans,” 2005, published by the U.S. department of health and human services and U.S. department of agriculture, appendixes A-1 and A-2 and “notes for appendix A-2” are hereby adopted by reference.

(2) Infection control. The department's document titled “tuberculosis (TB) guidelines for adult care homes,” dated July 2008, is hereby adopted by reference.

(b) The document adopted by reference in this subsection shall apply to each applicant for a nursing facility license and to each addition to a nursing facility licensed on or after the effective date of this regulation. The “international building code” (IBC), 2006 edition, published by the international code council, excluding the appendices, is hereby adopted by reference.

(c) The following material shall apply to all nursing facilities:

(1) Life safety code. Chapters one through 11, 18, 19, 40, and 42 of the national fire protection association's NFPA 101 “life safety code” (LSC), 2000 edition, are hereby adopted by reference.

(2) Americans with disabilities act accessibility guidelines. Chapters one through four and chapter six of the “Americans with disabilities act accessibility guidelines for buildings and facilities” (ADAAG), 28 C.F.R. part 36, appendix A, as in effect on July 1, 1994, are hereby adopted by reference and shall be known as “ADAAG.”

(3) Food code. Chapters one through seven of the “food code,” 2009, published by the U.S. department of health and human services, are hereby adopted by reference.

History: (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009; amended Jan. 7, 2011.)

26-39-438. Informal dispute resolution requests. Any adult care home administrator may request from the department an informal opportunity to dispute cited deficiencies pursuant to L. 2004, ch. 162, sec. 1 and amendments thereto. The adult care home administrator shall submit five copies of the request and the accompanying documentation required by L. 2004, ch. 162, sec. 1, and amendments thereto, to the department.

History: (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-439. Informal dispute resolution panel. (a) An informal dispute resolution panel, which is also known as an independent review panel, shall be appointed by the secretary. The membership of each informal dispute resolution panel shall consist of the members authorized by L. 2004, ch. 162, sec. 1 and amendments thereto.

(b) If an adult care home administrator requests a face-to-face meeting, the meeting shall be conducted at the department's administrative offices in Topeka, Kansas.

(c) The panel shall allow a representative of the adult care home to provide information and documentation that refute the disputed deficiency or deficiencies.

(d) The panel shall allow a representative of the department to provide information and documentation that support the cited deficiencies.

(e) The panel shall consider the following information during the informal dispute resolution process:

(1) The cited deficiency or deficiencies;

(2) the applicable state or federal regulations;

(3) the applicable state or federal interpretative guidelines;

(4) any relevant information and documentation related to the statement of deficiencies provided by the adult care home representative; and

(5) any relevant information and documentation related to the statement of deficiencies provided by the department's staff.

(f)(1) Each panel member shall adhere to departmental confidentiality requirements related to the information presented in the informal dispute resolution process, including the provisions of K.S.A. 39-934 and K.S.A. 39-1411, and amendments thereto.

(2) Each person who is not an employee of the department on aging shall sign a confidentiality agreement before serving on an informal dispute resolution panel. The confidentiality agreement shall include a provision that the person has read the statutes specified in paragraph (f)(1) and will not disclose any confidential information outside the dispute resolution process.

(3) The adult care home representative shall be informed when a member of the panel is not an employee of the department on aging.

(g) Except as specified in paragraph (f)(1), all information that is precluded from disclosure by statute shall remain confidential.

History: (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-440. Informal dispute resolution process. (a)(1) Departmental staff members may assist panel members in convening informal dispute resolution meetings within 30 days of the receipt of each request for informal dispute resolution. If the panel can not be convened within 30 days, the adult care home administrator shall be advised of the date of the panel meeting.

(2) More than one informal dispute resolution request may be reviewed during any panel meeting. The panel shall determine the order and method of the presentations by representatives of the adult care home and the department.

(b) Each representative presenting to the panel shall be limited to oral presentations only. Only panel members may ask questions of presenters.

(c) The panel may limit the time allowed for oral presentations.

(d) The panel shall consider all oral and written information presented and shall recommend one of the following to the secretary:

- (1) Upholding the deficiency;
- (2) deleting the deficiency; or
- (3) revising the scope and severity assessment.

(e) The panel shall provide the secretary with written recommendations, which shall be based upon the applicable statutes, regulations, and supporting documentation.

(f) The panel shall not consider any informal dispute resolution request that meets any of the following conditions:

- (1) Challenges any aspect of the survey process other than the disputed deficiency;
- (2) challenges the scope and severity assessment of deficiencies, except when the scope and severity assessment indicates substandard quality of care or immediate jeopardy;
- (3) alleges failure of the survey team to comply with requirements of the survey process;
- (4) alleges inconsistency of the survey team in citing deficiencies among adult care homes;
- (5) alleges inadequacy of the informal dispute resolution process; or
- (6) disputes imposed remedies.

(g) The informal dispute resolution process shall not delay the formal imposition of state or federal enforcement remedies related to the survey in which deficiencies are being disputed.

History: (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-441. Notification of final decision. (a) The informal dispute resolution panel shall submit a written recommendation to the secretary upon adjournment of the informal dispute resolution meeting. The panel's recommendation shall be accepted, rejected, or modified by the secretary.

(b) If the deficiencies are upheld, a departmental staff member shall notify the adult care home representative in writing that the informal dispute resolution request was unsuccessful and that the deficiencies will remain on the statement of deficiencies.

(c) If the deficiencies are deleted or the scope and severity assessments are revised, a department staff member shall notify the adult care home representative in writing that the informal dispute resolution was successful. A departmental staff member shall delete the deficiencies or adjust the scope and severity assessment, or both, and shall forward a revised statement of deficiencies to the adult care home administrator.

History: (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

**KANSAS ADMINISTRATIVE REGULATIONS
INTERMEDIATE CARE FACILITIES FOR
THE INTELLECTUALLY DISABLED**

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28-39-226. General licensure. The code of federal regulations 42 CFR 483.400 to CFR 483.480 inclusive, as published in the Federal Register, Vol. 53, No. 107, Friday, June 3, 1988, is adopted by reference.

History: (Authorized by and implementing K.S.A. 39-932; effective April 3, 1989.)

§483.400

were successfully completed. Documentation must include the date training was completed and the name of persons certifying the completion of training.

(h) All training programs and materials used by the facility must be available for review by CMS, the State Medicaid agency, and the State survey agency.

Subpart H [Reserved]

Subpart I—Conditions of Participation for Intermediate Care Facilities for Individuals with Intellectual Disabilities

SOURCE: 53 FR 20496, June 3, 1988, unless otherwise noted. Redesignated at 56 FR 48918, Sept. 26, 1991.

§483.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe regulations for intermediate care facility services in facilities for individuals with intellectual disabilities or persons with related conditions.

§483.405 Relationship to other HHS regulations.

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR Part 80), nondiscrimination on the basis of handicap (45 CFR Part 84), nondiscrimination on the basis of age (45 CFR Part 91), protection of human subjects of research (45 CFR Part 46), and fraud and abuse (42 CFR Part 455). Although those regulations are not in themselves considered conditions of participation under this Part, their violation may result in the termination or suspension of, or the refusal to grant or continue, Federal financial assistance.

§483.410 Condition of participation: Governing body and management.

(a) *Standard: Governing body.* The facility must identify an individual or

42 CFR Ch. IV (10-1-12 Edition)

individuals to constitute the governing body of the facility. The governing body must—

(1) Exercise general policy, budget, and operating direction over the facility;

(2) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility; and

(3) Appoint the administrator of the facility.

(b) *Standard: Compliance with Federal, State, and local laws.* The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, and sanitation.

(c) *Standard: Client records.* (1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

(d) *Standard: Services provided under agreements with outside sources.* (1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Provide that the facility is responsible for assuring that the outside

services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/IID, the ICF/IID remains directly responsible for the standards relating to physical environment that are specified in § 483.470 (a) through (g), (j) and (k).

(e) *Standard: Licensure.* The facility must be licensed under applicable State and local law.

[53 FR 20496, June 3, 1988. Redesignated at 56 FR 48918, Sept. 26, 1991, and amended at 57 FR 43925, Sept. 23, 1992]

§ 483.420 Condition of participation: Client protections.

(a) *Standard: Protection of clients' rights.* The facility must ensure the rights of all clients. Therefore, the facility must—

(1) Inform each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility;

(2) Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process;

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(5) Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do

work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail;

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(11) Ensure clients the opportunity to participate in social, religious, and community group activities;

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(13) Permit a husband and wife who both reside in the facility to share a room.

(b) *Standard: Client finances.* (1) The facility must establish and maintain a system that—

(i) Assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients; and

(ii) Precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.

(c) *Standard: Communication with clients, parents, and guardians.* The facility must—

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(2) Answer communications from clients' families and friends promptly and appropriately;

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with

the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(6) Notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(d) *Standard: Staff treatment of clients.*

(1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

(i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

§ 483.430 Condition of participation: Facility staffing.

(a) *Standard: Qualified intellectual disability professional.* Each client's active treatment program must be integrated, coordinated and monitored by a qualified intellectual disability professional who—

(1) Has at least one year of experience working directly with persons with intellectual disability or other developmental disabilities; and

(2) Is one of the following:

(i) A doctor of medicine or osteopathy.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category specified in paragraph (b)(5) of this section.

(b) *Standard: Professional program services.* (1) Each client must receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff must work directly with clients and with paraprofessional, non-professional and other professional program staff who work with clients.

(2) The facility must have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(3) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff must be licensed, certified, or registered, as applicable, to provide professional services by the State in which he or she practices. Those professional program staff who do not fall under the jurisdiction of State licensure, certification, or registration requirements, specified in § 483.410(b), must meet the following qualifications:

(i) To be designated as an occupational therapist, an individual must be

eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

(i) To be designated as an occupational therapy assistant, an individual must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

(ii) To be designated as a physical therapist, an individual must be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

(iv) To be designated as a physical therapy assistant, an individual must be eligible for registration by the American Physical Therapy Association or be a graduate of a two year college-level program approved by the American Physical Therapy Association or another comparable body.

(v) To be designated as a psychologist, an individual must have at least a master's degree in psychology from an accredited school.

(vi) To be designated as a social worker, an individual must—

(A) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(B) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

(vii) To be designated as a speech-language pathologist or audiologist, an individual must—

(A) Be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language-Hearing Association or another comparable body; or

(B) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(viii) To be designated as a professional recreation staff member, an individual must have a bachelor's degree in recreation or in a specialty area

such as art, dance, music or physical education.

(ix) To be designated as a professional dietitian, an individual must be eligible for registration by the American Dietetics Association.

(x) To be designated as a human services professional an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).

(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5) (i) through (x) of this section are not required—

(A) Except for qualified intellectual disability professionals;

(B) Except for the requirements of paragraph (b)(2) of this section concerning the facility's provision of enough qualified professional program staff; and

(C) Unless otherwise specified by State licensure and certification requirements.

(c) *Standard: Facility staffing.* (1) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing—

(i) Clients for whom a physician has ordered a medical care plan;

(ii) Clients who are aggressive, assaultive or security risks;

(iii) More than 16 clients; or

(iv) Fewer than 16 clients within a multi-unit building.

(3) There must be a responsible direct care staff person on duty on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing—

(i) Clients for whom a physician has not ordered a medical care plan;

(ii) Clients who are not aggressive, assaultive or security risks; and

(iii) Sixteen or fewer clients,

(4) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(d) *Standard: Direct care (residential living unit) staff.* (1) The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(ii) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(iii) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(4) When there are no clients present in the living unit, a responsible staff member must be available by telephone.

(e) *Standard: Staff training program.*

(1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program

plans for each client for whom they are responsible.

§ 483.440 Condition of participation: Active treatment services.

(a) *Standard: Active treatment.* (1) Each client must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward—

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) *Standard: Admissions, transfers, and discharge.* (1) Clients who are admitted by the facility must be in need of and receiving active treatment services.

(2) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation must contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility must—

(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must—

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

(c) *Standard: Individual program plan.*

(1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to—

(i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and

(ii) Designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and must—

(i) Identify the presenting problems and disabilities and where possible, their causes;

(ii) Identify the client's specific developmental strengths;

(iii) Identify the client's specific developmental and behavioral management needs;

(iv) Identify the client's need for services without regard to the actual availability of the services needed; and

(v) Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development and auditory functioning,

cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section, and the planned sequence for dealing with those objectives. These objectives must—

(i) Be stated separately, in terms of a single behavioral outcome;

(ii) Be assigned projected completion dates;

(iii) Be expressed in behavioral terms that provide measurable indices of performance;

(iv) Be organized to reflect a developmental progression appropriate to the individual; and

(v) Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan must specify:

(i) The methods to be used;

(ii) The schedule for use of the method;

(iii) The person responsible for the program;

(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) The inappropriate client behavior(s), if applicable; and

(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan must also:

(i) Describe relevant interventions to support the individual toward independence.

(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.

(iii) Include, for those clients who lack them, training in personal skills

essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

(v) Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(vi) Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan must be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

(d) *Standard: Program implementation.*

(1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility must develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

(e) *Standard: Program documentation.*

(1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measurable terms.

(2) The facility must document significant events that are related to the

client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(f) *Standard: Program monitoring and change.* (1) The individual program plan must be reviewed at least by the qualified intellectual disability professional and revised as necessary, including, but not limited to situations in which the client—

(i) Has successfully completed an objective or objectives identified in the individual program plan;

(ii) Is regressing or losing skills already gained;

(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(iv) Is being considered for training towards new objectives.

(2) At least annually, the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to—

(i) Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(ii) Insure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian; and

(iii) Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, timeout rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area

that the committee believes need to be addressed.

(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.

§ 483.450 Condition of participation: Client behavior and facility practices.

(a) *Standard: Facility practices—Conduct toward clients.* (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures must—

(i) Promote the growth, development and independence of the client;

(ii) Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(iii) Specify client conduct to be allowed or not allowed; and

(iv) Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients must participate in the formulation of these policies and procedures.

(3) Clients must not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(b) *Standard: Management of inappropriate client behavior.* (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures must be consistent with the provisions of paragraph (a) of this section. These procedures must—

(i) Specify all facility approved interventions to manage inappropriate client behavior;

(ii) Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(iii) Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been

tried systematically and demonstrated to be ineffective; and

(iv) Address the following:

(A) The use of time-out rooms.

(B) The use of physical restraints.

(C) The use of drugs to manage inappropriate behavior.

(D) The application of painful or noxious stimuli.

(E) The staff members who may authorize the use of specified interventions.

(F) A mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual program plan, in accordance with § 483.440(c) (4) and (5) of this subpart.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

(c) *Standard: Time-out rooms.* (1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(i) The placement is a part of an approved systematic time-out program as required by paragraph (b) of this section. (Thus, emergency placement of a client into a time-out room is not allowed.)

(ii) The client is under the direct constant visual supervision of designated staff.

(iii) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(2) Placement of a client in a time-out room must not exceed one hour.

(3) Clients placed in time-out rooms must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects,

uncovered light fixtures, unprotected electrical outlets.

(4) A record of time-out activities must be kept.

(d) *Standard: Physical restraints.* (1) The facility may employ physical restraint only—

(i) As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(ii) As an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(iii) As a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency must be:

(i) In effect no longer than 12 consecutive hours; and

(ii) Obtained as soon as the client is restrained or stable.

(3) The facility must not issue orders for restraint on a standing or as needed basis.

(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(5) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(7) Barred enclosures must not be more than three feet in height and must not have tops.

(e) *Standard: Drug usage.* (1) The facility must not use drugs in doses that interfere with the individual client's daily living activities.

(2) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is di-

rected specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(3) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(4) Drugs used for control of inappropriate behavior must be—

(i) Monitored closely, in conjunction with the physician and the drug regimen review requirement at § 483.460(j), for desired responses and adverse consequences by facility staff; and

(ii) Gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

§ 483.460 Condition of participation: Health care services.

(a) *Standard: Physician services.* (1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan must be integrated in the individual program plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(i) Evaluation of vision and hearing.

(ii) Immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(iii) Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

(iv) Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of

the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

(b) *Standard: Physician participation in the individual program plan.* A physician must participate in—

(1) The establishment of each newly admitted client's initial individual program plan as required by § 456.380 of this chapter that specified plan of care requirements for ICFs; and

(2) If appropriate, physicians must participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(c) *Standard: Nursing services.* The facility must provide clients with nursing services in accordance with their needs. These services must include—

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(3) For those clients certified as not needing a medical care plan, a review of their health status which must—

(i) Be by a direct physical examination;

(ii) Be by a licensed nurse;

(iii) Be on a quarterly or more frequent basis depending on client need;

(iv) Be recorded in the client's record; and

(v) Result in any necessary action (including referral to a physician to address client health problems).

(4) Other nursing care as prescribed by the physician or as identified by client needs; and

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(i) Training clients and staff as needed in appropriate health and hygiene methods;

(ii) Control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(iii) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(d) *Standard: Nursing staff.* (1) Nurses providing services in the facility must have a current license to practice in the State.

(2) The facility must employ or arrange for licensed nursing services sufficient to care for clients health needs including those clients with medical care plans.

(3) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or on-site consultation to the licensed practical or vocational nurse.

(5) Non-licensed nursing personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

(e) *Standard: Dental services.* (1) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals must participate, in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(f) *Standard: Comprehensive dental diagnostic services.* Comprehensive dental diagnostic services include—

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within twelve months before admission);

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(3) A review of the results of examination and entry of the results in the client's dental record.

(g) *Standard: Comprehensive dental treatment.* The facility must ensure comprehensive dental treatment services that include—

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(2) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(h) *Standard: Documentation of dental services.* (1) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

(i) *Standard: Pharmacy services.* The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(j) *Standard: Drug regimen review.* (1) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly.

(2) The pharmacist must report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist must prepare a record of each client's drug regimen re-

views and the facility must maintain that record.

(4) An individual medication administration record must be maintained for each client.

(5) As appropriate the pharmacist must participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

(k) *Standard: Drug administration.* The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(1) All drugs are administered in compliance with the physician's orders;

(2) All drugs, including those that are self-administered, are administered without error;

(3) Unlicensed personnel are allowed to administer drugs only if State law permits;

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(6) No client self-administers medications until he or she demonstrates the competency to do so;

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law; and

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(l) *Standard: Drug storage and record-keeping.* (1) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self administer drugs in accordance with § 483.460(k)(4) may have access to keys to their individual drug supply.

(3) The facility must maintain records of the receipt and disposition of all controlled drugs.

(4) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*, as implemented by 21 CFR part 308).

(5) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs.

(m) *Standard: Drug labeling.* (1) Labeling of drugs and biologicals must—

(i) Be based on currently accepted professional principles and practices; and

(ii) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility must remove from use—

(i) Outdated drugs; and

(ii) Drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.

(n) *Standard: Laboratory services.* (1) If a facility chooses to provide laboratory services, the laboratory must meet the requirements specified in part 493 of this chapter.

(2) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of service in accordance with the requirements of part 493 of this chapter.

[53 FR 20496, June 3, 1988, as amended at 57 FR 7136, Feb. 28, 1992]

§ 483.470 Condition of participation: Physical environment.

(a) *Standard: Client living environment.*

(1) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility must not segregate clients solely on the basis of their physical disabilities. It must integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders, etc., with others of comparable social and intellectual development.

(b) *Standard: Client bedrooms.* (1) Bedrooms must—

(i) Be rooms that have at least one outside wall;

(ii) Be equipped with or located near toilet and bathing facilities;

(iii) Accommodate no more than four clients unless granted a variance under paragraph (b)(3) of this section;

(iv) Measure at least 60 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(v) In all facilities initially certified, or in buildings constructed or with major renovations or conversions on or after October 3, 1988, have walls that extend from floor to ceiling.

(2) If a bedroom is below grade level, it must have a window that—

(i) Is usable as a second means of escape by the client(s) occupying the room; and

(ii) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(3) The survey agency may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified intellectual disability professional—

(i) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) Documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

(4) The facility must provide each client with—

(i) A separate bed of proper size and height for the convenience of the client;

(ii) A clean, comfortable, mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the client's needs, and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.

(c) *Standard: Storage space in bedroom.* The facility must provide—

(1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety; and

(2) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(d) *Standard: Client bathrooms.* The facility must—

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(2) Provide for individual privacy in toilets, bathtubs, and showers; and

(3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110 °Fahrenheit.

(e) *Standard: Heating and ventilation.*

(1) Each client bedroom in the facility must have—

(i) At least one window to the outside; and

(ii) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(2) The facility must—

(i) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(ii) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

(f) *Standard: Floors.* The facility must have—

(1) Floors that have a resilient, non-abrasive, and slip-resistant surface;

(2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(3) Exposed floor surfaces and floor coverings that promote mobility in

areas used by clients, and promote maintenance of sanitary conditions.

(g) *Standard: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by this subpart and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

(h) *Standard: Emergency plan and procedures.* (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(2) The facility must communicate, periodically review, make the plan available, and provide training to the staff.

(i) *Standard: Evacuation drills.* (1) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(i) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(ii) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(iii) Evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility must—

(i) Actually evacuate clients during at least one drill each year on each shift;

(ii) Make special provisions for the evacuation of clients with physical disabilities;

(iii) File a report and evaluation on each evacuation drill;

(iv) Investigate all problems with evacuation drills, including accidents, and take corrective action; and

(v) During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities must meet the requirements of paragraphs (i)(1) and (2) of this section for any live-in and relief staff they utilize.

(j) *Standard: Fire protection*—(1) *General*. Except as otherwise provided in this section—

(i) The facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the FEDERAL REGISTER to announce the changes.

(ii) Chapter 19.3.6.3.2, exception number 2 of the adopted LSC does not apply to a facility.

(2) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(3) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC).

(4) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

(5) Beginning March 13, 2006, a facility must be in compliance with Chapter 19.2.9, Emergency Lighting.

(6) Beginning March 13, 2006, Chapter 19.3.6.3.2, exception number 2 does not apply to a facility.

(7) *Facilities that meet the LSC definition of a health care occupancy*. (i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the Life Safety Code if the following requirements are met:

(A) The waiver would not adversely affect the health and safety of the clients.

(B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(ii) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if—

(A) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(B) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(C) The dispensers are installed in a manner that adequately protects against inappropriate access;

(D) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00-1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the

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Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269; and

(E) The dispensers are maintained in accordance with dispenser manufacturer guidelines.

(k) *Standard: Paint.* The facility must—

(1) Use lead-free paint inside the facility; and

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

(l) *Standard: Infection control.* (1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

[53 FR 20496, June 3, 1988. Redesignated at 56 FR 48918, Sept. 26, 1991, as amended at 68 FR 1387, Jan. 10, 2003; 69 FR 49271, Aug. 11, 2004; 70 FR 15239, Mar. 25, 2005; 71 FR 55340, Sept. 22, 2006]

§ 483.480 Condition of participation: Dietetic services.

(a) *Standard: Food and nutrition services.* (1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those

used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(b) *Standard: Meal services.* (1) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(i) Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(ii) Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under paragraph (b)(1)(i) of this section.

(2) Food must be served—

(i) In appropriate quantity;

(ii) At appropriate temperature;

(iii) In a form consistent with the developmental level of the client; and

(iv) With appropriate utensils.

(3) Food served to clients individually and uneaten must be discarded.

(c) *Standard: Menus.* (1) Menus must—

(i) Be prepared in advance;

(ii) Provide a variety of foods at each meal;

(iii) Be different for the same days of each week and adjusted for seasonal changes; and

(iv) Include the average portion sizes for menu items.

(2) Menus for food actually served must be kept on file for 30 days.

(d) *Standard: Dining areas and service.*

The facility must—

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs;

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(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level; and

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

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484.220 Calculation of the national adjusted prospective 60-day episode payment rate for case-mix and area wage levels.

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484.230 Methodology used for the calculation of the low-utilization payment adjustment.

484.235 Methodology used for the calculation of the partial episode payment adjustment.

484.240 Methodology used for the calculation of the outlier payment.

484.245 Accelerated payments for home health agencies.

484.250 Patient assessment data.

484.260 Limitation on review.

484.265 Additional payment.

AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

SOURCE: 54 FR 33367, Aug. 14, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 484.1 Basis and scope.

(a) *Basis and scope.* This part is based on the indicated provisions of the following sections of the Act:

(1) Sections 1861(o) and 1891 establish the conditions that an HHA must meet in order to participate in Medicare.

(2) Section 1861(z) specifies the Institutional planning standards that HHAs must meet.

(3) Section 1895 provides for the establishment of a prospective payment system for home health services covered under Medicare.

Adult Care Home

ICF/ID

16 Beds or less

28-39-225. Physical environment and complete construction; 16 beds or fewer. (a) General provisions. The following provisions describe the physical environment and complete construction requirements for residential buildings in which not more than 16 residents are housed in one building. The facility shall provide for a safe, sanitary environment and for the safety and comfort of the residents. Residential buildings which house six or fewer residents are governed solely by the code of federal regulations, 42 CFR 483.470, as published in the Federal Register, Vol. 53, No. 107, Friday, June 3, 1988 and adopted by reference in K.A.R. 28-39-226.

(b) Each residential building shall consist of at least the following units, areas, and rooms which shall all be within a single building and under one roof.(1) A bedroom unit which shall consist of not more than 16 beds. Each bed shall be located in a room designed for not more than four beds. At least one single-bed room shall be provided. Each resident bedroom shall meet the following requirements:

(A) Minimum room areas, excluding toilet rooms, closets, lockers, wardrobes, other built-in fixed items, alcoves, or vestibules, shall be 80 square feet in single-bed rooms and 60 square feet per bed in multi-bed rooms;

(B) Each toilet room shall contain at least a water closet and a lavatory but not more than two water closets. The lavatory may be omitted if the toilet adjoins bedrooms containing a lavatory. There shall be not less than one water closet for each five residents;

(C) Each resident room shall be provided with a fixed closet or freestanding wardrobe with doors. A shelf and hanging rod shall be provided;

(D) Each resident room shall be equipped with furnishings required to meet the developmental needs of the residents; and

(E) Each resident room shall be located not more than 75 feet from a toilet room and not more than 150 feet from any one of the other resident use areas contained within the residential building, except other bedrooms. Distance shall be measured from one foot outside the resident room door along the shortest line in the general corridor, within one foot of corners, to one foot of the door to each service area.

(2) Service areas required below shall be located in all residential buildings. Each service area shall have a door opening from the general corridor system for direct access without passing through any intervening use area. Exceptions shall include adjoining use areas which have closely related functions. Lounges, living rooms, dens, and large open or central living areas may be considered as corridors. Each facility shall contain:

(A) An administrative area with space for charting, records, and a telephone;

(B) A room with a water closet and lavatory for staff and visitors that is accessible without passing through a resident bedroom;

(C) A locked medication storage area with space for separate storage of each resident's medication. A separate locked compartment shall be provided within the area for controlled drugs and narcotic storage;

(D) Space for storage of clean linen. This space shall be separate from the soiled linen area;

(E) Space for holding soiled laundry with provisions to prevent odors, contamination of clean linen, and spread of disease. In residential buildings where laundry processing is done, commercial or household-type washing and drying machines shall be provided to process soiled laundry in the workroom area. The workroom shall contain a flushing rim clinic sink, a work counter, and a storage cabinet for supplies. In resident buildings for eight or fewer residents, the flushing rim clinic sink shall not be required. Clean supplies and materials shall not be stored in this area;

(F) Space for storage of equipment for the facility's use. This space may be part of the janitor's closet;

(G) Bathing units at the rate of one bathtub or shower per five residents. There shall be separate bathing units for each sex. Each bathing unit shall be located in a room or area with access to a water closet and handwashing lavatory without entering the general corridor. Bathing units shall be located within enclosures which provide privacy;

(H) A janitor's closet with a utility sink, hot and cold water, a shelf, and mop hanging provision. In residential buildings for eight or fewer residents, the janitor's closet shall not be required if other provisions are made for sanitary storage of housekeeping equipment;

(I) Living, dining, and recreational areas at the rate of 27 square feet per bed. At least 14 square feet of this space shall be utilized for dining space;

(J) A separate quiet area unless all single-bed rooms are provided. Residents shall have access to this area for reading, meditation, and private consultation with family, guests, or other residents;

(K) Public areas which include:

(i) An entrance at grade level which is designed to accommodate the handicapped in wheelchairs;

(ii) at least one public toilet accessible to and usable by the physically handicapped; and

(iii) a public telephone accessible for use from a wheelchair;

(L) Dietary areas, including kitchen and pantry areas, in the size required to implement appropriate food service. The dietary area shall include:

(i) Storage for a four-day supply of food, including cold storage;

(ii) food preparation facilities which shall include equipment for thawing, portioning, cooking, and baking;

(iii) a two-compartment sink for vegetable preparation; and

(iv) a commercial or domestic type dishwasher with a sanitizing cycle for warewashing;

(M) Provision for disposal of waste by incineration, mechanical destruction, compaction, removal or by a combination of these techniques. Stored waste shall be in water-tight, closed containers;

(N) An equipment room or rooms or a separate building or buildings for boilers and mechanical and electrical equipment, and storage of building maintenance supplies; and

(O) If tools, supplies, or equipment used for yard or exterior maintenance are stored at the facility, a room which opens to the outside or which is located in a detached building for storage of such equipment.

(c) Details and finishes.

(1) Details.

(A) Rooms containing bathtubs, sitz baths, showers, and toilets subject to occupancy by residents shall be equipped with doors and hardware which will permit access from outside the room.

(B) Windows and outer doors left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open or shall be provided with security screens.

(C) Doors, sidelights, borrowed lights, and windows in which the glazing is within 18 inches (46 centimeters) of the floor shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges if broken. If glazing in any area does not meet the above requirement, protective barriers or railing shall be provided. Safety glass or plastic glazing materials as described above shall be used for shower doors and bath enclosures.

(D) Grab bars shall be provided for all residents' toilets, showers, tubs, and sitz baths. The bars shall have 1½ inch (3.8 centimeters) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 150 pounds (113.4 kilograms).

(E) Shower bases and tubs shall have a nonslip surface.

(2) Finishes.

(A) Wall bases in kitchens, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be tightly sealed and constructed without voids that can harbor insects.

(B) Wall finishes shall be washable and in the immediate area of plumbing fixtures shall be smooth and moisture resistant. Finish, trim, wall, and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(C) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(D) Ceilings in the dietary and food preparation areas shall be cleanable by vacuum cleaning, wet cleaning or other dustless methods. These areas shall not have exposed or unprotected sewer lines.

(d) Mechanical requirements.

(1) Heating, air conditioning, and ventilating systems.

(A) The system shall be designed to maintain a year-round indoor temperature range in resident care areas of 70° F. (21° C.) to 85° F. (29° C.) with a relative humidity range of 30 to 60 percent. The winter outside design temperature of the facility shall be -10° F. (-23° C.) dry bulb and the summer outside design temperature of the facility shall be 100° F. (38° C.) dry bulb.

(B) Each central ventilation or air conditioning system shall be equipped with filters having a minimum efficiency of 25 percent.

(2) Plumbing and piping systems.

(A) Backflow prevention devices (vacuum breakers) shall be installed on each bedpan flushing attachment and on each fixture to which hoses or tubing can be attached.

(B) Water distribution systems shall be arranged to provide hot water at hot water outlets at all times. The temperature of hot water shall range between 98° F. (36° C.) and 115° F. (46°

C.) at shower, bathing, and handwashing facilities throughout the system except when a higher temperature, not to exceed 130° F. (54° C.), is provided as part of a written training program that provides for direct supervision.

(e) Electrical requirements.

(1) All spaces occupied by persons or machinery and equipment within the buildings, approaches to buildings, and parking lots shall have adequate lighting.

(2) Minimum lighting intensity levels shall be as required in Table 1.

(3) Portable lamps shall not be accepted as light sources, except as specifically permitted in Table 1.

(4) Corridors and stairways shall remain lighted at all times.

TABLE 1. ARTIFICIAL LIGHT REQUIREMENTS

Place	Light Measured in Foot Candles Where Measured	
Kitchen and other food preparation and serving areas	30	Counter level
Dining room	25	Table level
Living room and/or recreation room		
General	15	Three feet above floor
Reading and other specialized areas (<i>may be portable lamp</i>)	50	Chair or table level
Nurse's station and office		
General	20	Three feet above floor
Desk and charts	50	Desk level
Clean workroom	30	Counter level
Central bath and showers	30	Three feet above floor
Resident's room		
General		
Bed (<i>may be portable</i>)	10	Three feet above floor

<i>lamp)</i>	30	Mattress top level
Laundry	30	Three feet above floor
Storage room		
General	5	Three feet above floor
Disinfectant or cleaning agent storage area	15	Three feet above floor
Corridors	10	Floor level
Stairways	20	Step level
Exits	5	Floor level
Heating plant space	5	Floor level

(5) All lights shall be equipped with shades, globes, grids, or glass panels that prevent direct glare to the residents' eyes.

(f) Site location requirements. Each facility shall be:

- (1) Served by all-weather roads or streets;
- (2) free from noxious or hazardous smoke or fumes;
- (3) a minimum of 3,000 feet (914 meters) from feedlots, shipping or holding pens, or other concentrated livestock operations.
- (4) free of flooding for a 20-year period; and
- (5) sufficient in area and configuration to accommodate the facility, drives, parking, sidewalks, and a recreation area.

(g) Site development requirements.

(1) Final grading of the site shall provide topography for positive surface drainage away from the building and positive protection and control of surface drainage and freshets from adjacent areas.

(2) All drives and parking areas shall be surfaced with concrete, asphalt, or equivalent, smooth all-weather finish. Unsealed gravel surfaces shall not be used.

(3) Except for lawn or shrubbery which may be used in landscape screening, an unencumbered outdoor open area of at least 50 square feet per resident shall be provided for recreational use and shall be so designated on the plot plan. The licensing agency may approve equivalent facilities provided by terraces, roof gardens, or similar provisions for homes located in high density urban areas.

History: (Authorized by K.S.A. 39-932; implementing K.S.A. 39-932; effective May 1, 1982; amended May 1, 1984; amended April 3, 1989.)

Adult Care Homes
ICF/ID
Larger than 16 beds

26-40-301. Nursing facility physical environment; construction and site requirements.

Each nursing facility shall be designed, constructed, equipped, and maintained to protect the health and safety of the residents and personnel and the public. (a) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum. New construction of a nursing facility and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the requirements of the following, as adopted by reference in K.A.R. 26-39-105:

- (1) The “international building code” (IBC);
- (2) the national fire protection association's NFPA 101 “life safety code”; and
- (3) the “Americans with disabilities act accessibility guidelines for buildings and facilities” (ADAAG).

(b) Site requirements. The site of each nursing facility shall meet the following requirements:

- (1) Be served by all-weather roads or streets;
- (2) be accessible to physician services, fire and other emergency services, medical facilities, churches, and population centers where employees can be recruited and retained;
- (3) be located in an area sufficiently remote from noise sources that would cause the day or night average sound levels to exceed 65 decibels;
- (4) be free from noxious and hazardous fumes;
- (5) be at least 4,000 feet from concentrated livestock operations, including shipping areas and holding pens;
- (6) be located above the 100-year flood zone if the property is located in a flood hazard area; and
- (7) be sufficient in area and configuration to accommodate the nursing facility, drives, parking, sidewalks, recreational area, and community zoning restrictions.

(c) Site development. Development of the site of each nursing facility shall meet the following requirements:

- (1) All buildings comprising a nursing facility shall be located on one site or contiguous sites.
- (2) Final grading of the site shall have topography for positive surface drainage away from each occupied building and positive protection and control of surface drainage and freshets from adjacent areas.
- (3) Each nursing facility shall have off-street parking located adjacent to the main building and each freestanding building that contains a resident unit, at a rate of one parking space for every two residents, based on resident capacity.

(4) Each nursing facility shall have at least the minimum number of accessible parking spaces required by ADAAG, as adopted by reference in K.A.R. 26-39-105, that are sized and signed as reserved for the physically disabled, on the shortest accessible route of travel from the adjacent parking lot to an accessible entrance.

(5) Each nursing facility shall have convenient access for service vehicles, including ambulances and fire trucks, and for maneuvering, parking, and unloading delivery trucks.

(6) All drives and parking areas shall be surfaced with a smooth, all-weather finish. Unsealed gravel shall not be used.

(7) Except for lawn or shrubbery used in landscape screening, each nursing facility shall have an unencumbered outdoor area of at least 50 square feet per resident, based on resident capacity, for recreational use and shall so designate this area on the plot plan. Equivalent amenities provided by terraces, roof gardens, or similar structures for facilities located in high-density urban areas may be approved by the secretary. If a multistoried building is licensed as a nursing facility after the effective date of this regulation, the nursing facility shall have outdoor space on each level.

History: (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-302. Nursing facility physical environment; applicants for initial licensure and new construction. (a) Applicability. This regulation shall apply to each applicant for a nursing facility license and to any addition to a nursing facility licensed on the effective date of this regulation.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum. Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

- (1) The “international building code” (IBC);
- (2) the national fire protection association's NFPA 101 “life safety code” (LSC); and
- (3) the “Americans with disabilities act accessibility guidelines for buildings and facilities” (ADAAG).

(c) Nursing facility design. The design and layout of each nursing facility shall differentiate among public, semiprivate, and private space and shall promote the deterrence of unnecessary travel through private space by staff and the public. The resident unit shall be arranged to achieve a home environment, short walking and wheeling distances, localized social areas, and decentralized work areas.

(d) Resident unit. A “resident unit” shall mean a group of resident rooms, care support areas, and common rooms and areas as identified in this subsection and subsections (e) and (f). Each resident unit shall have a resident capacity of no more than 30 residents and shall be

located within a single building. If the nursing facility is multilevel, each resident unit shall be located on a single floor.

(1) Resident rooms. At least 20 percent of the residents on each resident unit shall reside in a private resident room. The occupancy of the remaining rooms shall not exceed two residents per room.

(A) Each resident room shall meet the following requirements:

(i) Be located on a floor at or above ground level;

(ii) allow direct access to the corridor;

(iii) allow direct access from the room entry to the toilet room and to the closet or freestanding wardrobe without going through the bed area of another resident;

(iv) measure at least 120 square feet in single resident rooms and at least 200 square feet in double resident rooms, exclusive of the entrance door and toilet room door swing area, alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items; and

(v) provide each resident with direct access to an operable window that opens for ventilation. The total window area shall not be less than 12 percent of the gross floor area of the resident room.

(B) Each bed area in a double resident room shall have separation from the adjacent bed by a full-height wall, a permanently installed sliding or folding door or partition, or other means to afford complete visual privacy. Use of a ceiling-suspended curtain may cover the entrance to the bed area.

(C) The configuration of each resident room shall be designed to allow at least three feet of clearance along the foot of each bed and along both sides of each bed.

(D) The nursing facility shall have functional furniture to meet each resident's needs, including a bed of adequate size with a clean, comfortable mattress that fits the bed, and bedding appropriate to the weather and the needs of the resident.

(E) Each resident's room shall include personal storage space in a fixed closet or freestanding wardrobe with doors. This storage shall have minimum dimensions of one foot 10 inches in depth by two feet six inches in width and shall contain an adjustable clothes rod and shelf installed at a height easily reached by the resident. Accommodations shall be provided for hanging full-length garments.

(2) Resident toilet rooms. Each resident toilet room shall serve no more than one resident room and be accessed directly from the resident's room. Each resident toilet room shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105.

(A) Each resident toilet room shall have at least a five-foot turning radius to allow maneuverability of a wheelchair. If the shower presents no obstruction to the turning radius, the space occupied by the shower may be included in the minimum dimensions.

(B) The center line of each resident-use toilet shall be at least 18 inches from the nearest wall or partition to allow staff to assist a resident to and from the toilet.

(C) Each toilet room shall contain a hand-washing sink.

(D) At least 40 percent of the residents on each resident unit shall have a shower in the resident's toilet room.

(i) Each shower shall measure at least three feet by five feet with a threshold of ½ inch or less.

(ii) Showers shall be curtained or in another type of enclosure for privacy.

(e) Resident unit care support rooms and areas. The rooms and areas required in this subsection shall be located in each resident unit and shall be accessed directly from the general corridor without passage through an intervening room or area, except the medication room as specified in paragraph (e)(2)(A) and housekeeping closets. A care support area shall be located less than 200 feet from each resident room and may serve two resident units if the care support area is centrally located for both resident units.

(1) Nurses' workroom or area. Each resident unit shall have sufficient areas for supervisory work activities arranged to ensure the confidentiality of resident information and communication.

(A) A nurses' workroom or area shall have space for the following:

(i) Charting;

(ii) the transmission and reception of resident information;

(iii) clinical records and other resident information;

(iv) a telephone and other office equipment; and

(v) an enunciator panel or monitor screen for the call system. If a resident unit has more than one nurses' workroom or area, space for an enunciator panel or monitor for the call system shall not be required in more than one nurses' workroom or area.

(B) The nurses' workroom or area shall be located so that the corridors outside resident rooms are visible from the nurses' workroom or area. The nursing facility may have cameras and monitors to meet this requirement.

(C) Direct visual access into each nurses' work area shall be provided if the work area is located in an enclosed room.

(2) Medication room or area. Each resident unit shall have a room or area for storage and preparation of medications or biologicals for 24-hour distribution, with a temperature not to exceed 85°F. This requirement shall be met by one or more of the following:

(A) A room with an automatically closing, self-locking door visible from the nurses' workroom or area. The room shall contain a work counter with task lighting, hand-washing sink, refrigerator, and shelf space for separate storage of each resident's medications. The secured medication storage room shall contain separately locked compartments for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(B) a nurses' workroom or area equipped with a work counter with task lighting, hand-washing sink, locked refrigerator, and locked storage for resident medications. A separately locked compartment shall be located within the locked cabinet, drawer, or refrigerator for the

storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(C) a locked medication cart in addition to a medication room or area if the cart is located in a space convenient for control by nursing personnel who are authorized to administer medication. If controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse are stored in the medication cart, the cart shall contain a separately locked compartment for the storage of these medications; or

(D) in the resident's room if the room contains space for medication preparation with task lighting, access to a hand-washing sink, and locked cabinets or drawers for separate storage of each resident's medication. Controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse shall not be stored in a resident's room.

(3) Den or consultation room. Each resident unit shall have a room for residents to use for reading, meditation, solitude, or privacy with family and other visitors and for physician visits, resident conferences, and staff meetings.

(A) The room area shall be at least 120 square feet, with a length or width of at least 10 feet.

(B) The room shall contain a hand-washing sink.

(C) A den or consultation room shall not be required if all resident rooms are private.

(4) Clean workroom. Each resident unit shall have a room for preparation, storage, and distribution of clean or sterile materials and supplies and resident care items.

(A) The room shall contain a work counter with a sink and adequate shelving and cabinets for storage.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet.

(C) If the resident unit is located in a freestanding building, a clothes dryer for processing resident personal laundry that is not contaminated laundry may be located in the clean workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per dryer shall be provided.

(ii) The soiled workroom shall contain a washing machine positioned over a catch pan piped to a floor drain.

(iii) The clean workroom shall have a door opening directly into the soiled workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) Storage and preparation of food and beverages shall not be permitted in the clean workroom.

(5) Clean linen storage. Each resident unit shall have a room or area with adequate shelving, cabinets, or cart space for the storage of clean linen proximate to the point of use. The storage area may be located in the clean workroom.

(6) Soiled workroom. Each resident unit shall have a soiled workroom for the disposal of wastes, collection of contaminated material, and the cleaning and sanitizing of resident care utensils.

(A) The soiled workroom shall contain a work counter, a two-compartment sink, a covered waste receptacle, a covered soiled linen receptacle, and a storage cabinet with a lock for sanitizing solutions and cleaning supplies.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet.

(C) If the resident unit is located in a freestanding building, a washing machine for processing resident personal laundry that is not contaminated laundry may be located in the soiled workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per washing machine shall be provided.

(ii) The washing machine shall be positioned over a catch pan piped to a floor drain.

(iii) The clean workroom shall contain a clothes dryer.

(iv) The soiled workroom shall have a door opening directly into the clean workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) If a housekeeping room is located in the soiled workroom, the housekeeping room shall be enclosed and an additional minimum of 20 square feet shall be provided in the soiled workroom.

(E) Clean supplies, equipment, and materials shall not be stored in the soiled workroom.

(7) Equipment storage rooms or areas. Each resident unit shall have sufficient rooms or enclosed areas for the storage of resident unit equipment. The total space shall be at least 80 square feet plus an additional minimum of one square foot per resident capacity on the unit, with no single room or area less than 40 square feet. The width and length of each room or area shall be at least five feet.

(8) Housekeeping room. Each resident unit shall have at least one room for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain a floor receptor or service sink, hot and cold water, adequate shelving, provisions for hanging mops and other cleaning tools, and space for buckets, supplies, and equipment.

(B) If the housekeeping room in the resident unit serves the resident kitchen and any other areas of the unit, the nursing facility shall have separately designated mops and buckets for use in each specific location.

(9) Toilet room. Each resident unit shall have at least one toilet room with a hand-washing sink that is accessible for resident, staff, and visitor use.

(f) Common rooms and areas in resident units. The rooms and areas required in this subsection shall be located in each resident unit, except as specified in this subsection, and shall be accessed directly from the general corridor without passage through an intervening room or

area. The required room or area shall be located less than 200 feet from each resident room. A room or area may serve two resident units only if centrally located.

(1) Living, dining, and recreation areas. Each resident unit shall have sufficient space to accommodate separate and distinct resident activities of living, dining, and recreation.

(A) Space for living, dining, and recreation shall be provided at a rate of at least 40 square feet per resident based on each resident unit's capacity, with at least 25 square feet per resident in the dining area.

(B) Window areas in the living, dining, and recreation areas shall be at least 10 percent of the gross floor space of those areas. Each of these areas shall have exposure to natural daylight. The window area requirement shall not be met by the use of skylights.

(C) The dining area shall have adequate space for each resident to access and leave the dining table without disturbing other residents.

(D) Storage of items used for recreation and other activities shall be near the location of their planned use.

(2) Resident kitchen. Any resident unit may have a decentralized resident kitchen if the kitchen meets the following requirements:

(A) Is adequate in relation to the size of the resident unit;

(B) is designed and equipped to meet the needs of the residents; and

(C) meets the requirements in paragraph (g)(5).

(3) Nourishment area. Each resident unit shall have an area available to each resident to ensure the provision of nourishment and beverages, including water, between scheduled meals. The nourishment area shall contain a hand-washing sink, counter, equipment for serving nourishment and beverages, a refrigerator, and storage cabinets and shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. The nourishment area may be located in the resident unit kitchen if all residents have access to the area between scheduled meals.

(4) Bathing room. Each resident unit shall have at least one bathing room to permit each resident to bathe privately and either independently or with staff assistance. The bathing room shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and include the following:

(A) A hand-washing sink;

(B) an area enclosed for privacy that contains a toilet for resident use. The center line of each resident-use toilet shall be at least 18 inches from the nearest wall or partition to allow staff to assist a resident to and from the toilet;

(C) a hydrotherapy bathing unit;

(D) a shower that measures at least four feet by five feet without curbs unless a shower is provided in each resident's toilet room;

(E) a visually enclosed area for privacy during bathing, drying, and dressing, with space for a care provider and wheelchair; and

(F) a locked supply cabinet.

(5) Personal laundry room. Any resident unit may have a resident laundry room for residents to launder personal laundry that is not contaminated laundry, if the requirements in paragraph (g)(6)(C) are met.

(6) Mobility device parking space. Each resident unit shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(g) Common rooms and support areas in the nursing facility's main building. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and shall be accessed directly from the general corridor without passage through an intervening room or area. If a resident unit is located in a freestanding building, the nursing facility administrator shall ensure that transportation is provided for each resident to access services and activities that occur in the main building to enhance the resident's physical, mental, and psychosocial well-being.

(1) Multipurpose room. Each nursing facility shall have a room for resident use for social gatherings, religious services, entertainment, or crafts, with sufficient space to accommodate separate functions.

(A) The multipurpose room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on the nursing facility's resident capacity.

(B) The multipurpose room shall contain a work counter with a hand-washing sink that is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and storage space and lockable cabinets for equipment and supplies.

(2) Rehabilitation room. Each nursing facility shall have a room for the administration and implementation of rehabilitation therapy.

(A) The rehabilitation room shall include the following:

(i) Equipment for carrying out each type of therapy prescribed for the residents;

(ii) a hand-washing sink accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105;

(iii) an enclosed storage area for therapeutic devices; and

(iv) provisions for resident privacy.

(B) The rehabilitation room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60 based on resident capacity, to a maximum requirement of 655 square feet.

(C) If a resident unit is located in a freestanding building, the resident unit may have a designated area for rehabilitation in a bathing room. The combined use of the space shall not limit the residents' bathing opportunities or rehabilitation therapy.

(3) Mobility device parking space. Each nursing facility shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere

with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(4) Beauty and barber shop. Each nursing facility shall have a room for the hair care and grooming of residents appropriate in size for the number of residents served.

(A) The beauty and barber shop shall contain at least one shampoo sink, space for one floor hair dryer, workspace, and a lockable supply cabinet.

(B) If a resident unit is located in a freestanding building, the resident unit may have a designated area for the hair care and grooming of residents in the bathing room if all of the following conditions are met:

(i) The bathing room does not contain a shower.

(ii) The area contains at least one shampoo sink, space for one floor hair dryer, and workspace.

(iii) The combined use of the space does not limit the residents' bathing, hair care, or grooming opportunities.

(5) Dietary areas. Each nursing facility shall have dietary service areas that are adequate in relation to the size of the nursing facility and are designed and equipped to meet the needs of the residents. Each nursing facility shall meet the requirements of the "food code," as adopted by reference in K.A.R. 26-39-105. Dietary service areas shall be located to minimize transportation for meal service unrelated to the resident unit past the resident rooms. The following elements shall be included in each central kitchen and resident unit kitchen:

(A) A control station for receiving food supplies;

(B) food preparation and serving areas and equipment in accordance with the following requirements:

(i) Conventional food preparation systems shall include space and equipment for preparing, cooking, baking, and serving; and

(ii) convenience food service systems, including systems using frozen prepared meals, bulk-packaged entrees, individual packaged portions, or contractual commissary services, shall include space and equipment for thawing, portioning, cooking, baking, and serving;

(C) space for meal service assembly and distribution equipment;

(D) a two-compartment sink for food preparation;

(E) a hand-washing sink in the food preparation area;

(F) a ware-washing area apart from, and located to prevent contamination of, food preparation and serving areas. The area shall include all of the following:

(i) Commercial-type dishwashing equipment;

(ii) a hand-washing sink;

(iii) space for receiving, scraping, sorting, and stacking soiled tableware and transferring clean tableware to the using area; and

(iv) if in a resident kitchen, a sink and adjacent under-counter commercial or residential dishwasher that meets the national sanitation foundation (NSF) international standards;

(G) a three-compartment deep sink for manual cleaning and sanitizing or, if in a resident kitchen, an alternative means for a three-step process for manual cleaning and sanitizing;

(H) an office in the central kitchen for the dietitian or dietetic services supervisor or, if in a resident kitchen, a workspace for the dietitian or dietetic services supervisor;

(I) a toilet room and a hand-washing sink available for dietary staff, separated by a vestibule from the central kitchen or, if in a resident kitchen, a toilet room with a hand-washing sink located in close proximity to the kitchen;

(J) an enclosed housekeeping room located within the central kitchen that contains a floor receptor with hot and cold water, shelving, and storage space for housekeeping equipment and supplies or, if in a resident kitchen, an enclosed housekeeping room adjacent to the kitchen that contains storage for dietary services cleaning equipment;

(K) an ice machine that, if available to residents for self-serve, shall dispense ice directly into a container and be designed to minimize noise and spillage onto the floor;

(L) sufficient food storage space located adjacent to the central kitchen or resident kitchen to store at least a four-day supply of food to meet residents' needs, including refrigerated, frozen, and dry storage;

(M) sufficient space for the storage and indoor sanitizing of cans, carts, and mobile equipment; and

(N) a waste storage area in a separate room or an outside area that is readily available for direct pickup or disposal.

(6) Laundry services. Each nursing facility shall have the means for receiving, processing, and storing linen needed for resident care in a central laundry or off-site laundry, or both, or a personal laundry room located on a resident unit in combination with these options. The arrangement of laundry services shall provide for an orderly workflow from dirty to clean, to minimize cross-contamination.

(A) If nursing facility laundry or more than one resident's personal laundry is to be processed, the laundry services area shall have separate rooms, with doors that do not open directly onto the resident unit, that have the following:

(i) A soiled laundry room for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room that contains commercial laundry equipment for washing and drying and a sink;

(iii) an enclosed housekeeping room that opens into the laundry processing area and contains a floor receptor with hot and cold water, shelving, and space for storage of housekeeping equipment and supplies;

(iv) a clean laundry room for handling, storing, issuing, mending, and holding laundry with egress that does not require passing through the processing or soiled laundry room; and

(v) storage space for laundry supplies.

(B) If nursing facility laundry or more than one resident's personal laundry is to be processed, the washing machine shall be capable of meeting high-temperature washing or low-temperature washing requirements as follows:

(i) If high-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures of at least 160°F and manufacturer documentation that the machine has a wash cycle of at least 25 minutes at 160°F or higher.

(ii) If low-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures to ensure a wash temperature of at least 71°F and manufacturer documentation of a chlorine bleach rinse of 125 parts per million (ppm) at a wash temperature of at least 71°F. Oxygen-based bleach may be used as an alternative to chlorine bleach if the product is registered by the environmental protection agency.

(C) If each resident's personal laundry is processed separately on a resident unit, the laundry may be handled within one or more rooms if separate, defined areas are provided for handling clean and soiled laundry. The following elements shall be included:

(i) A soiled laundry room or area for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) at least one washing machine. Each washing machine shall be positioned over a catch pan piped to a floor drain;

(iii) a processing room or area that contains a clothes dryer and a hand-washing sink;

(iv) a clean laundry room or area for handling, storing, issuing, mending, and holding laundry; and

(v) storage space for laundry supplies.

(D) If laundry is processed off-site, the following elements shall be provided:

(i) A soiled laundry room, equipped with containers that have tightly fitted lids for holding laundry, that is exhausted to the outside; and

(ii) a clean laundry room for receiving, holding, inspecting, and storing linen.

(7) Central storage. Each nursing facility shall have at least five square feet per resident capacity in separate rooms or separate space in one room for storage of clean materials or supplies and oxygen.

(8) Housekeeping room. Each nursing facility shall have a sufficient number of rooms for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment. Each housekeeping room shall contain a floor receptor with hot and cold water, adequate shelving, provisions for hanging mops and other cleaning tools, and space for buckets, supplies, and equipment.

(h) Staff and public areas. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and in each freestanding building with a resident unit unless otherwise indicated.

(1) Staff support area. Each nursing facility shall have a staff support area for staff and volunteers that contains the following, at a minimum:

(A) A staff lounge or area;

(B) lockers, drawers, or compartments that lock for safekeeping of each staff member's personal effects; and

(C) a toilet room and hand-washing sink that are accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement.

(2) Public areas. Each nursing facility shall provide the following public areas to accommodate residents, staff, and visitors:

(A) A sheltered entrance at grade level that is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105;

(B) a lobby or vestibule with communication to the reception area, information desk, or resident unit;

(C) at least one public toilet room with a toilet and sink that are accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement;

(D) a drinking fountain or cooler or other means to obtain fresh water; and

(E) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(3) Administrative areas. Each nursing facility shall have the following areas for administrative work activities in the main building:

(A) An administrator's office;

(B) a director of nursing office;

(C) general offices as needed for admission, social services, private interviews, and other professional and administrative functions; and

(D) space for office equipment, files, and financial and clinical records.

(i) Nursing facility support systems. Each nursing facility shall have support systems to promote staff responsiveness to each resident's needs and safety.

(1) Call system. Each nursing facility shall have a functional call system that ensures that nursing personnel working in the resident unit and other staff designated to respond to resident calls are notified immediately when a resident has activated the call system.

(A) Each nursing facility shall have a call button or pull cord located at each bed and in each beauty and barber shop that, if activated, will initiate all of the following:

(i) Produce an audible signal at the nurses' workroom or area, or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the resident room number and bed, or beauty and barber shop;

(iii) produce a visual signal at the resident room corridor door or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce visual and audible signals in clean and soiled workrooms and in the medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(B) Each nursing facility shall have an emergency call button or pull cord located next to each resident-use toilet, shower, and bathtub that, if activated, will initiate all of the following:

(i) Produce a repeating audible signal at the nurses' workroom or area, or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the location or room number of the toilet, shower, or bathtub;

(iii) produce a rapidly flashing light adjacent to the corridor door at the site of the emergency or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce a rapidly flashing light and a repeating audible signal in the nurses' workroom or area, clean workroom, soiled workroom, and medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(C) The administrator shall implement a policy to ensure that all calls activated from an emergency location receive a high-priority response from staff.

(D) If the nursing facility does not have a wireless call system, the nursing facility shall have additional visible signals at corridor intersections in multicorridor units for all emergency and nonemergency calls.

(E) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(F) If call systems include two-way voice communication, staff shall take precautions to protect resident privacy.

(G) If a nursing facility uses a wireless system to meet the requirements of paragraphs (i)(1)(A) through (E), all of the following additional requirements shall be met:

(i) The nursing facility shall be equipped with a system that records activated calls.

(ii) A signal unanswered for a designated period of time, but not more than every three minutes, shall repeat and also be sent to another workstation or to staff that were not designated to receive the original call.

(iii) Each wireless system shall utilize radio frequencies that do not interfere with or disrupt pacemakers, defibrillators, and any other medical equipment and that receive only signals initiated from the manufacturer's system.

(H) The nursing facility's preventative maintenance program shall include the testing of the call system at least weekly to verify operation of the system.

(2) Door monitoring system. The nursing facility shall have an electrical monitoring system on each door that exits the nursing facility and is available to residents. The monitoring system shall alert staff when the door has been opened by a resident who should not leave the nursing facility unless accompanied by staff or other responsible person.

(A) Each door to the following areas that is available to residents shall be electronically monitored:

- (i) The exterior of the nursing facility, including enclosed outdoor areas;
- (ii) interior doors of the nursing facility that open into another type of adult care home if the exit doors from that adult care home are not monitored; and
- (iii) any area of the building that is not licensed as an adult care home.

(B) The electrical monitoring system on each door shall remain activated until manually reset by nursing facility staff.

(C) The electrical monitoring system on a door may be disabled during daylight hours if nursing facility staff has continuous visual control of the door.

(j) Nursing facility maintenance and waste processing services.

(1) Maintenance, equipment, and storage areas. Each nursing facility shall have areas for repair, service, and maintenance functions that include the following:

- (A) A maintenance office;
- (B) a storage room for building maintenance supplies;
- (C) an equipment room or separate building for boilers, mechanical equipment, and electrical equipment; and
- (D) a maintenance storage area that opens to the outside, or is located in a detached building, for the storage of tools, supplies, and equipment used for yard and exterior maintenance.

(2) Waste processing services. Each nursing facility shall have space and equipment for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, or removal, or by a combination of these techniques.

History: (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-303. Nursing facility physical environment; existing nursing facilities. (a)

Applicability. This regulation shall apply to all nursing facilities licensed on the effective date of this regulation.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum.

(1) Each nursing facility shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

- (A) The national fire protection association's NFPA 101 "life safety code" (LSC); and
- (B) the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG).

(2) Each nursing facility and any portion of each nursing facility that was approved under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure.

(c) Nursing facility design. The design and layout of each nursing facility shall differentiate among public, semiprivate, and private space and shall promote the deterrence of unnecessary travel through private space by staff and the public. The resident unit shall be arranged to achieve a home environment, short walking and wheeling distances, localized social areas, and decentralized work areas.

(d) Resident unit. A "resident unit" shall mean a group of resident rooms, care support areas, and common rooms and areas as identified in this subsection and subsections (e) and (f), unless otherwise indicated. Each resident unit shall have a resident capacity of no more than 60 residents and shall be located within a single building.

(1) Resident rooms. At least five percent of the resident rooms shall have a maximum occupancy of one resident per room. The occupancy of the remaining rooms shall not exceed two residents per room. If a nursing facility has rooms that accommodate three or four residents on the effective date of this regulation, this requirement shall not apply until the nursing facility converts its existing three- and four-resident rooms to private or semiprivate rooms.

(A) Each resident room shall meet the following requirements:

(i) Be located on a floor at or above ground level;

(ii) allow direct access to the corridor;

(iii) measure at least 100 square feet in single resident rooms and at least 160 square feet in double resident rooms, exclusive of alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items. If the building was constructed before January 1, 1963 and licensed as a nursing facility on the effective date of this regulation, rooms shall measure at least 90 square feet in single resident rooms and at least 160 square feet in double resident rooms, exclusive of alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items; and

(iv) provide at least one operable exterior window that opens for ventilation. The window area shall not be less than 12 percent of the gross floor area of the resident room.

(B) Each bed area in a double resident room shall have separation from the adjacent bed by use of walls, doors, or ceiling suspended curtains to afford complete visual privacy.

(C) The configuration of each resident room shall be designed to allow at least three feet of clearance along the foot of each bed and along both sides of each bed.

(D) The nursing facility shall have functional furniture to meet each resident's needs, including a bed of adequate size with a clean, comfortable mattress that fits the bed, and bedding appropriate to the weather and the needs of the resident.

(E) Each resident's room shall include personal storage space in a fixed closet or freestanding wardrobe with doors. This storage shall have minimum dimensions of one foot 10 inches in depth by two feet six inches in width and shall contain an adjustable clothes rod and shelf installed at a height easily reached by the resident. Accommodations shall be provided for hanging full-length garments. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(2) Resident toilet rooms. Each resident toilet room shall serve no more than two resident rooms and be accessed directly from the resident's room. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, resident access to the toilet room may be from the general corridor.

(A) Each toilet room shall contain at least a toilet and hand-washing sink, unless a hand-washing sink is provided in the resident room adjacent to the toilet room.

(B) Each resident toilet room shall have at least 30 square feet to allow maneuverability of a wheelchair. If the room contains a shower that presents no obstruction to the turning radius, the space occupied by the shower may be included in the minimum dimensions.

(C) If a shower is present in a toilet room, the shower shall be curtained or in another type of enclosure for privacy.

(e) Resident unit care support rooms and areas. The rooms and areas required in this subsection shall be located in each resident unit and shall be accessed directly from the general corridor without passage through an intervening room or area, except the medication room as specified in paragraph (e)(2)(A) and housekeeping closets. Each care support area shall be located less than 200 feet from each resident room. If the building was constructed before February 15, 1977 and the nursing facility was licensed on the effective date of this regulation, the distance specified in this paragraph shall not apply.

(1) Nurses' workroom or area. Each resident unit shall have sufficient areas for supervisory work activities arranged to ensure the confidentiality of resident information and communication.

(A) A nurses' workroom or area shall have space for the following:

(i) Charting;

(ii) the transmission and reception of resident information;

(iii) clinical records and other resident information;

(iv) a telephone and other office equipment; and

(v) an enunciator panel or monitor screen for the call system. If a resident unit has more than one nurses' workroom or area, space for an enunciator panel or monitor for the call system shall not be required in more than one nurses' workroom or area.

(B) The nurses' workroom or area shall be located so that the corridors outside resident rooms are visible from the nurses' workroom or area. The nursing facility may have cameras and monitors to meet this requirement.

(C) Direct visual access into each nurses' work area shall be provided if the work area is located in an enclosed room.

(2) Medication room or area. Each resident unit shall have a room or area for storage and preparation of medications or biologicals for 24-hour distribution, with a temperature not to exceed 85°F. This requirement shall be met by one or more of the following:

(A) A room with an automatically closing, self-locking door visible from the nurses' workroom or area. The room shall contain a work counter with task lighting, hand-washing sink, refrigerator, and shelf space for separate storage of each resident's medications. The secured

medication storage room shall contain separately locked compartments for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(B) if the resident unit serves no more than 32 residents, a nurses' workroom or area equipped with a work counter with task lighting, hand-washing sink, locked refrigerator, and locked storage for resident medications. A separately locked compartment shall be located within the locked cabinet, drawer, or refrigerator for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(C) a locked medication cart, in addition to a medication room or area, if the cart is located in a space convenient for control by nursing personnel who are authorized to administer medication. If controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse are stored in the medication cart, the cart shall contain a separately locked compartment for the storage of these medications; or

(D) in the resident's room if the room contains space for medication preparation with task lighting, access to a hand-washing sink, and locked cabinets or drawers for separate storage of each resident's medication. Controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse shall not be stored in a resident's room.

(3) Clean workroom. Each resident unit shall have a room for the preparation, storage, and distribution of clean or sterile materials and supplies and resident care items.

(A) The room shall contain a work counter with a sink and adequate shelving and cabinets for storage.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(C) If the resident unit is located in a freestanding building, a clothes dryer for processing resident personal laundry that is not contaminated laundry may be located in the clean workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per dryer shall be provided.

(ii) The soiled workroom shall contain a washing machine positioned over a catch pan.

(iii) The clean workroom shall have a door opening directly into the soiled workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) Storage and preparation of food and beverages shall not be permitted in the clean workroom.

(4) Clean linen storage. Each resident unit shall have a room or area with adequate shelving, cabinets, or cart space for the storage of clean linen. The storage area may be located in the clean workroom.

(5) Soiled workroom. Each resident unit shall have a soiled workroom for the disposal of wastes, collection of contaminated material, and the cleaning and sanitizing of resident care utensils.

(A) The soiled workroom shall contain a work counter, a two-compartment sink, a covered waste receptacle, a covered soiled linen receptacle, and a storage cabinet with a lock for sanitizing solutions and cleaning supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the soiled workroom shall contain these fixtures except that the sink shall be at least a one-compartment sink.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions shall not apply.

(C) If the resident unit is located in a freestanding building, a washing machine for processing resident personal laundry that is not contaminated laundry may be located in the soiled workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per washing machine shall be provided.

(ii) The washing machine shall be positioned over a catch pan.

(iii) The clean workroom shall contain a clothes dryer.

(iv) The soiled workroom shall have a door opening directly into the clean workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) A housekeeping room may be located in the soiled workroom if the following conditions are met:

(i) The soiled workroom is located in a resident unit in a freestanding building.

(ii) The housekeeping room is enclosed.

(iii) The soiled workroom includes at least 20 square feet in additional space.

(E) Clean supplies, equipment, and materials shall not be stored in the soiled workroom.

(6) Equipment storage rooms or areas. Each resident unit shall have sufficient rooms or enclosed areas for the storage of resident unit equipment.

(A) The total space shall be at least 120 square feet plus an additional minimum of one square foot for each resident based on resident capacity, with no single room or area less than 30 square feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(B) If mechanical equipment or electrical panel boxes are located in the storage area, the nursing facility shall have additional space for the access to and servicing of equipment.

(7) Housekeeping room. Each resident unit shall have at least one room for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain the following:

- (i) A floor receptor or service sink, or both;
- (ii) hot and cold water;
- (iii) adequate shelving;
- (iv) provisions for hanging mops and other cleaning tools; and
- (v) space for buckets, supplies, and equipment.

(B) If the housekeeping room in the resident unit serves the resident kitchen and any other areas of the unit, the nursing facility shall designate separate mops and buckets for use in each specific location.

(C) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have at least one janitor's closet that contains either a floor receptor or service sink, or both, and storage space for janitorial equipment and supplies.

(8) Toilet room. Each resident unit shall have a staff toilet room with a hand-washing sink. If a resident unit is located in a freestanding building, the resident unit shall have at least one toilet room that contains a handwashing sink and is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, for resident, staff, and visitor use. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, this paragraph shall not apply.

(9) Resident kitchen. Any resident unit may have a decentralized resident kitchen if the resident kitchen meets the following requirements:

- (A) Is adequate in relation to the size of the resident unit;
- (B) is designed and equipped to meet the needs of the residents; and
- (C) meets the requirements in paragraph (f)(7).

(10) Nourishment area. Each resident unit shall have an area available to each resident to ensure the provision of nourishment and beverages, including water, between scheduled meals. The nourishment area may serve more than one resident unit if centrally located for easy access from each of the nursing areas served. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall not be required to have a nourishment area.

(A) The nourishment area shall contain a hand-washing sink, equipment for serving nourishment and beverages, a refrigerator, and storage cabinets.

(B) The nourishment area may be located in the resident unit kitchen if the kitchen has both a hand-washing sink and counter accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and all residents have access to the area between scheduled meals.

(11) Bathing room. Each nursing facility shall have a room or rooms with sufficient bathing units to permit each resident to bathe privately and either independently or with staff assistance.

(A) Each nursing facility shall have at least one hydrotherapy bathing unit. If the building was constructed before November 1, 1993 and licensed as a nursing facility on the effective date of this regulation, this requirement shall not apply.

(B) Each nursing facility shall have bathing units at a rate of one for each 15 residents, based on the number of residents who do not have a toilet room, with a shower accessed directly from the resident's room. A hydrotherapy bathing unit may be counted as two bathing units to meet this ratio.

(C) The bathing room shall contain the following:

(i) A hand-washing sink;

(ii) an area enclosed for privacy that contains a toilet for resident use;

(iii) a shower that measures at least four feet by four feet without curbs and is designed to permit use by a resident in a wheelchair, unless a shower is provided in each resident's toilet room. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply;

(iv) a visually enclosed area for privacy during bathing, drying, and dressing, with space for a care provider and wheelchair; and

(v) a locked supply cabinet.

(12) Personal laundry room. Any resident unit may have a laundry room for each resident to launder personal laundry that is not contaminated laundry, if the requirements in paragraph (f)(8) are met.

(13) Mobility device parking space. Each nursing facility shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(f) Common rooms and support areas in the nursing facility's main building. The rooms and areas required in this subsection shall be located in the main building of each nursing facility, unless otherwise indicated, and shall be accessed directly from the general corridor without passage through an intervening room or area. If a resident unit is located in a freestanding building, the administrator shall ensure that transportation is provided for each resident to access services and activities that occur in the main building to enhance the resident's physical, mental, and psychosocial well-being.

(1) Living, dining, and recreation areas. Each nursing facility shall have sufficient space to accommodate separate and distinct resident activities of living, dining, and recreation. If a resident unit is located in a freestanding building, the resident unit shall include living, dining, and recreation areas.

(A) Space for living, dining, and recreation shall be provided at a rate of at least 27 square feet per resident based on each resident unit's capacity, with at least 14 square feet per resident in the dining area. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have space

for living, dining, and recreation at a rate of at least 20 square feet per resident based on each resident unit's capacity, with at least 10 square feet per resident in the dining area.

(B) Window areas in each living, dining, and recreation area shall be at least 10 percent of the gross floor space of those areas. The window area requirement shall not be met by the use of skylights.

(2) Multipurpose room. Each nursing facility shall have a room or area for resident use for social gatherings, religious services, entertainment, or crafts, with sufficient space to accommodate separate functions.

(A) The multipurpose room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on the nursing facility's resident capacity. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(B) The multipurpose room or area shall contain a work counter with a hand-washing sink, and storage space and lockable cabinets for equipment and supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the hand-washing sink may be located in close proximity to the multipurpose room or area.

(3) Den. Each nursing facility shall have a room for residents to use for reading, meditation, solitude, or privacy with family and other visitors unless each resident has a private room. The room area shall be at least 80 square feet. This paragraph shall not apply to facilities that meet the following conditions:

(A) The building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation.

(B) Any decrease to the nursing facility's resident capacity is for the sole purpose of converting semiprivate rooms to private rooms.

(4) Exam room. Each nursing facility shall have a room for a physician to examine and privately consult with a resident.

(A) The exam room shall meet the following requirements:

(i) The room area shall be at least 120 square feet, with a length or width of at least 10 feet.

(ii) The room shall contain a hand-washing sink, an examination table, and a desk or shelf for writing.

(iii) If the examination room is located in the rehabilitation therapy room, the examination room shall be equipped with cubicle curtains.

(B) The requirement for an exam room shall not apply to any nursing facility that meets both of the following conditions:

(i) The building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation.

(ii) Any decrease to the nursing facility's resident capacity on or after the effective date of this regulation is for the sole purpose of converting semiprivate rooms to private rooms.

(5) Rehabilitation room. Each nursing facility shall have a room for the administration and implementation of rehabilitation therapy.

(A) The rehabilitation room shall include the following:

(i) Equipment for carrying out each type of therapy prescribed for the residents;

(ii) a hand-washing sink;

(iii) an enclosed storage area for therapeutic devices; and

(iv) provisions for resident privacy.

(B) The rehabilitation room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on resident capacity, to a maximum requirement of 655 square feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(C) If a resident unit is located in a freestanding building, the resident unit may have a designated area for rehabilitation in a bathing room. The combined use of the space shall not limit the residents' bathing opportunities or rehabilitation therapy.

(6) Beauty and barber shop. Each nursing facility shall have a room or area for the hair care and grooming of residents appropriate in size for the number of residents served.

(A) The beauty and barber shop shall contain at least one shampoo sink, space for one floor hair dryer, workspace, and a lockable supply cabinet.

(B) If a resident unit is located in a freestanding building, the resident unit may have a designated area for the hair care and grooming of residents in the bathing room if all of the following conditions are met:

(i) The bathing room does not contain a shower.

(ii) The area contains at least one shampoo sink, space for one floor hair dryer, and workspace.

(iii) The combined use of the space does not limit the residents' bathing, hair care, or grooming opportunities.

(7) Dietary areas. Each nursing facility shall have dietary service areas that are adequate in relation to the size of the nursing facility and are designed and equipped to meet the needs of the residents. Each nursing facility shall meet the requirements of the "food code," as adopted by reference in K.A.R. 26-39-105, unless otherwise indicated in this subsection. The following elements shall be included in each central kitchen and resident kitchen:

(A) A control station for receiving food supplies;

(B) food preparation and serving areas and equipment in accordance with the following requirements:

(i) Conventional food preparation systems shall include space and equipment for preparing, cooking, baking, and serving; and

(ii) convenience food service systems, including systems using frozen prepared meals, bulk-packaged entrees, individual packaged portions, or contractual commissary services, shall include space and equipment for thawing, portioning, cooking, baking, and serving;

(C) space for meal service assembly and distribution equipment;

(D) a two-compartment sink for food preparation. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the kitchen shall have at least a one-compartment sink for food preparation;

(E) a hand-washing sink in the food preparation area;

(F) a ware-washing area apart from, and located to prevent contamination of, food preparation and serving areas. The area shall include all of the following:

(i) Commercial-type dishwashing equipment;

(ii) space for receiving, scraping, sorting, and stacking soiled tableware and transferring clean tableware to the using area; and

(iii) if in a resident kitchen, an under-counter commercial or residential dishwasher that meets the national sanitation foundation (NSF) international standards;

(G) a three-compartment deep sink for manual cleaning and sanitizing or, if in a resident kitchen, an alternative means for a three-step process for manual cleaning and sanitizing;

(H) an office in the central kitchen for the dietitian or dietetic services supervisor or, if in a resident kitchen, a workspace for the dietitian or dietetic services supervisor;

(I) a toilet room and a hand-washing sink available for dietary staff located within close proximity to the kitchen;

(J) an enclosed housekeeping room located within the central kitchen that contains a floor receptor or service sink with hot and cold water, shelving, and storage space for housekeeping equipment and supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, a housekeeping room shall not be required in the kitchen. If in a resident kitchen, there shall be an enclosed housekeeping room adjacent to the kitchen that contains storage for dietary services cleaning equipment;

(K) an ice machine that, if available to residents for self-serve, shall dispense ice directly into a container and be designed to minimize noise and spillage onto the floor;

(L) sufficient food storage space located adjacent to the central kitchen or resident kitchen to store at least a four-day supply of food to meet residents' needs, including refrigerated, frozen, and dry storage;

(M) sufficient space for the storage and sanitizing of cans, carts, and mobile equipment; and

(N) a waste storage area in a separate room or an outside area that is readily available for direct pickup or disposal.

(8) Laundry services. Each nursing facility shall have the means for receiving, processing, and storing linen needed for resident care in a central laundry or off-site laundry, or both, or a personal laundry room located on a resident unit in combination with these options.

The arrangement of laundry services shall provide for an orderly workflow from dirty to clean, to minimize cross-contamination.

(A) If nursing facility laundry or more than one resident's personal laundry is to be processed, the laundry services area shall have separate rooms, with doors that do not open directly onto the resident unit, that have the following:

(i) A soiled laundry room for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room that contains commercial laundry equipment for washing and drying and a hand-washing sink;

(iii) an enclosed housekeeping room that opens into the laundry processing area and contains either a floor receptor or service sink, or both, and shelving and space for storage of housekeeping equipment and supplies;

(iv) a clean laundry room for handling, storing, issuing, mending, and holding laundry with egress that does not require passing through the processing or soiled laundry room; and

(v) storage space for laundry supplies.

(B) If nursing facility laundry or more than one resident's personal laundry is to be processed, the washing machine shall be capable of meeting high-temperature washing or low-temperature washing requirements as follows:

(i) If high-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures of at least 160°F and manufacturer documentation that the machine has a wash cycle of at least 25 minutes at 160°F or higher.

(ii) If low-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures to ensure a wash temperature of at least 71°F and manufacturer documentation of a chlorine bleach rinse of 125 parts per million (ppm) at a wash temperature of at least 71°F. Oxygen-based bleach may be used as an alternative to chlorine bleach if the product is registered by the environmental protection agency.

(C) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the following elements shall be included:

(i) A soiled laundry room or area for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room or area that contains commercial laundry equipment for washing and drying and a handwashing sink;

(iii) a clean laundry room or area for handling, storing, issuing, mending, and holding laundry; and

(iv) storage space for laundry supplies.

(D) If each resident's personal laundry is processed separately on a resident unit, the laundry may be handled within one or more rooms if separate, defined areas are provided for handling clean and soiled laundry.

(E) If laundry is processed off-site, the following elements shall be provided:

(i) A soiled laundry room, equipped with containers that have tightly fitted lids for holding laundry, that is exhausted to the outside; and

(ii) a clean laundry room for receiving, holding, inspecting, and storing linen.

(9) Central storage. Each nursing facility shall have at least five square feet per resident capacity in separate rooms or separate space in one room for storage of clean materials or supplies and oxygen. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(10) Housekeeping room. Each nursing facility shall have a sufficient number of rooms for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain the following:

(i) A floor receptor or service sink;

(ii) hot and cold water;

(iii) adequate shelving;

(iv) provisions for hanging mops and other cleaning tools; and

(v) space for buckets, supplies, and equipment.

(B) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have at least one housekeeping room with a floor receptor or service sink and with storage space for equipment and supplies.

(g) Staff and public areas. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and in each freestanding building with a resident unit unless otherwise indicated.

(1) Staff support area. Each nursing facility shall have a staff support area for staff and volunteers that contains the following, at a minimum:

(A) A staff lounge or area;

(B) lockers, drawers, or compartments that lock for safekeeping of each staff member's personal effects; and

(C) a toilet room and hand-washing sink. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, this requirement shall not apply.

(2) Public areas. Each nursing facility shall have public areas to accommodate residents, staff, and visitors.

(A) Each building constructed and licensed as a nursing facility before February 15, 1977 shall have the following public areas:

(i) A sheltered entrance at grade level to accommodate persons in wheelchairs;

(ii) one public toilet and hand-washing sink;

(iii) at least one toilet and hand-washing sink accessible to a person in a wheelchair;

(iv) a drinking fountain or cooler, or other means to obtain fresh water; and
(v) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(B) Each building constructed on or after February 15, 1977 and licensed as a nursing facility on the effective date of this regulation shall have the following public areas:

(i) A sheltered entrance at grade level to accommodate persons in wheelchairs;
(ii) a lobby or vestibule with communication to the reception area, information desk, or resident unit;
(iii) at least one public toilet and hand-washing sink that are accessible to a person in a wheelchair. If a resident unit is located in a freestanding building, the toilet room on the resident unit may meet this requirement;

(iv) if a nursing facility has a resident capacity greater than 60, at least one additional public toilet and handwashing sink shall be provided;

(v) a drinking fountain or cooler, or other means to obtain fresh water; and

(vi) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(3) Administrative areas. Each nursing facility shall have the following areas for administrative work activities in the main building:

(A) An administrator's office; and

(B) space for office equipment, files, and financial and clinical records.

(h) Nursing facility support systems. Each nursing facility shall have support systems to promote staff responsiveness to each resident's needs and safety.

(1) Call system. Each nursing facility shall have a functional call system that ensures that nursing personnel working in the resident unit and other staff designated to respond to resident calls are notified immediately when a resident has activated the call system.

(A) Each nursing facility shall have a call button or pull cord located next to each bed that, if activated, will initiate all of the following:

(i) Produce an audible signal at the nurses' workroom or area or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the resident room number;

(iii) produce a visual signal at the resident room corridor door or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce visual and audible signals in clean and soiled workrooms and in the medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(B) Each nursing facility shall have an emergency call button or pull cord located next to each resident-use toilet, shower, and bathtub that, if activated, will initiate all of the following:

- (i) Produce a repeating audible signal at the nurses' workroom or area or activate the portable electronic device worn by each required staff member with an audible tone or vibration;
- (ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the location or room number of the toilet, shower, or bathtub;
- (iii) produce a rapidly flashing light adjacent to the corridor door at the site of the emergency or activate an electronic portable device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and
- (iv) produce a rapidly flashing light and a repeating audible signal in the nurses' workroom or area, clean workroom, soiled workroom, and medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(C) The administrator shall implement a policy to ensure that all calls activated from an emergency location receive a high-priority response from staff.

(D) If the nursing facility does not have a wireless call system, the nursing facility shall have additional visible signals at corridor intersections in multicorridor units for all emergency and nonemergency calls. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall not be required to have additional visible signals at corridor intersections for all emergency and nonemergency calls.

(E) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(F) If call systems include two-way voice communication, staff shall take precautions to protect resident privacy.

(G) If a nursing facility uses a wireless system to meet the requirements of paragraphs (h)(1)(A) through (E), all of the following additional requirements shall be met:

- (i) The nursing facility shall be equipped with a system that records activated calls.
- (ii) A signal unanswered for a designated period of time, but not more than every three minutes, shall repeat and also be sent to another workstation or to staff that were not designated to receive the original call.

(iii) Each wireless system shall utilize radio frequencies that do not interfere with or disrupt pacemakers, defibrillators, and any other medical equipment and that receive only signals initiated from the manufacturer's system.

(H) The nursing facility's preventative maintenance program shall include the testing of the call system at least weekly to verify operation of the system.

(I) If the building was constructed before May 1, 1982 and licensed as a nursing facility on the effective date of this regulation, the call system shall be required to meet the following requirements:

- (i) Each resident bed shall have a call button that, when activated, registers at the nurses' work area with an audible and visual signal.
- (ii) The call system shall produce a visual signal at the resident room corridor door.

(iii) The nursing facility shall have an emergency call button or pull cord next to each resident-use toilet, shower, and bathtub accessible to residents that, when activated, registers at the nurses' work area with an audible and visual signal.

(iv) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(2) Door monitoring system. The nursing facility shall have an electrical monitoring system on each door that exits the nursing facility and is available to residents. The monitoring system shall alert staff when the door has been opened by a resident who should not leave the nursing facility unless accompanied by staff or other responsible person.

(A) Each door to the following areas that is available to residents shall be electronically monitored:

- (i) The exterior of the nursing facility, including enclosed outdoor areas;
- (ii) interior doors of the nursing facility that open into another type of adult care home if the exit doors from that adult care home are not monitored; and
- (iii) any area of the building that is not licensed as an adult care home.

(B) The electrical monitoring system on each door shall remain activated until manually reset by nursing facility staff.

(C) The electrical monitoring system on a door may be disabled during daylight hours if nursing facility staff has continuous visual control of the door.

(i) Nursing facility maintenance and waste processing services.

(1) Maintenance, equipment, and storage areas. Each nursing facility constructed after February 15, 1977 and licensed on the effective date of this regulation shall have areas for repair, service, and maintenance functions that include the following:

- (A) A maintenance office and shop;
- (B) a storage room for building maintenance supplies. The storage room may be a part of the maintenance shop in nursing facilities with 120 or fewer beds;
- (C) an equipment room or separate building for boilers, mechanical equipment, and electrical equipment.

(2) Waste processing services. The nursing facility shall have space and equipment for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, or removal, or by a combination of these techniques.

History: (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-304. Nursing facility physical environment; details and finishes. Each nursing facility shall incorporate details and finishes to create a home environment.

(a) Codes and standards. Nursing facilities may be subject to codes, standards, and regulations of several different jurisdictions, including local, state, and federal authorities. The requirements in this regulation shall be considered as a minimum. Each nursing facility and each portion of a nursing facility that was licensed under a previous regulation shall, at a minimum,

remain in compliance with the regulation or building code in effect at the date of licensure. Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

(1) The “international building code” (IBC);
(2) the national fire protection association's NFPA 101 “life safety code” (LSC); and
(3) the “Americans with disabilities act accessibility guidelines for buildings and facilities” (ADAAG).

(b) Details.

(1) Corridors.

(A) The width of each corridor shall be at least eight feet in any resident-use area and at least six feet in any nursing facility support area.

(B) Handrails shall not be considered an obstruction when measuring the width of corridors.

(C) Doors shall not swing directly into corridors, with the exception of doors to small closets and spaces that are not subject to occupancy. Walk-in closets shall be considered occupiable spaces.

(2) Ceiling height.

(A) The height of each ceiling shall be at least eight feet above the finished floor with the following exceptions:

(i) Each ceiling in a storage room or other normally unoccupied space shall be at least seven feet eight inches above the finished floor.

(ii) Each ceiling in a room containing ceiling-mounted equipment shall have sufficient height to accommodate the proper functioning, repair, and servicing of the equipment.

(B) Each building component and suspended track, rail, and pipe located in the path of normal traffic shall be at least six feet eight inches above the finished floor.

(C) Each architecturally framed and trimmed doorway or other opening in a corridor or room shall have a height of at least six feet eight inches above the finished floor.

(3) Doors and door hardware.

(A) Each door on any opening between corridors and spaces subject to occupancy, with the exception of elevator doors, shall be swinging-type.

(B) Each door to a room containing at least one resident-use toilet, bathtub, or shower shall be swinging-type, sliding, or folding and shall be capable of opening outward or designed to allow ingress to the room without pushing against a resident who could have collapsed in the room.

(C) The width of the door opening to each room that staff need to access with beds or stretchers shall be at least three feet eight inches. The width of each door to a resident-use toilet room and other rooms that staff and residents need to access with wheelchairs shall be at least three feet.

(D) No more than five percent of the resident rooms may have a Dutch door to the corridor for physician-ordered monitoring of a resident who is disoriented.

(E) Each exterior door that can be left in an open position shall have insect screens.

(F) Each resident-use interior and exterior door shall open with ease and little resistance.

(G) Each resident-use swinging-type door shall have lever hardware or sensors for ease of use by residents with mobility limitations.

(4) Glazing. Safety glazing materials shall be required in all doors with glass panels, sidelights, and any breakable material located within 18 inches of the floor. Safety glass or safety glazing materials shall be used on any breakable material used for a bath enclosure or shower door.

(5) Windows.

(A) Each window in a resident's room or in a resident-use area shall have a sill located no greater than 32 inches above the finished floor and at least two feet six inches above the exterior grade. This paragraph shall not apply if the building was constructed and licensed as a nursing facility before February 15, 1977. If the building was constructed and licensed as a nursing facility on or after February 15, 1977 and before November 1, 1993, the nursing facility shall have a windowsill height three feet or less above the floor in the living and dining areas for at least 50 percent of the total window area.

(B) Each window in a resident's room shall be operable.

(C) Each operable window shall have an insect screen.

(D) Each operable window shall be designed to prevent falls when open or shall be equipped with a security screen.

(E) Blinds, sheers, or other resident-controlled window treatments shall be provided throughout each resident unit to control light levels and glare.

(6) Grab bars.

(A) Grab bars shall be installed at each resident-use toilet and in each shower and tub.

(B) Each wall-mounted grab bar shall have a clearance of 1½ inches from the wall.

(C) Each grab bar, including those molded into a sink counter, shall have strength to sustain a concentrated load of 250 pounds.

(D) Permanent or flip-down grab bars that are 1½ inches in diameter shall be installed on any two sides of each resident-use toilet, or the resident-use toilet shall have at least one permanent grab bar mounted horizontally at least 33 inches and no more than 36 inches above the floor and slanted at an angle.

(E) The ends of each grab bar shall return to the wall or floor.

(F) Each grab bar shall have a finish color that contrasts with that of the adjacent wall surface.

(7) Handrails.

(A) Each handrail shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. Alternative cross sections and configurations that support senior mobility shall be permitted.

- (B) Each stairway and ramp shall have handrails.
- (C) A handrail shall be provided for each resident-use corridor with a wall length greater than 12 inches.
 - (D) Each handrail shall have a clearance of 1½ inches from the wall.
 - (E) The ends of each handrail shall return to the wall.
 - (F) Each handrail and fastener shall be completely smooth and free of rough edges.
- (8) Heated surfaces.
 - (A) Each heated surface in excess of 100°F with which a resident may have contact shall be insulated and covered to protect the resident.
 - (B) If heated surfaces, including cook tops, ovens, and steam tables, are used in resident areas, emergency shut-offs shall be provided.
- (9) Hand-washing stations.
 - (A) The water supply spouts for each sink shall be sensor-operated or operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.
 - (B) The water supply spout at each sink located in the resident unit and any other areas available for resident use shall be mounted so that the discharge point is at least five inches above the rim of the fixture.
 - (C) An enclosed single-issue paper towel dispenser or mechanical hand-drying device shall be provided at each hand-washing sink.
 - (D) A wastebasket shall be located at each hand-washing sink.
 - (E) A mirror shall be placed at each hand-washing sink located in a resident room, a resident toilet room, and a bathing room and in each public toilet room. The placement of the mirror shall allow for convenient use by both a person who uses a wheelchair and a person who is ambulatory. The bottom edge of each mirror shall be no more than 40 inches from floor level.
- (10) Lighting.
 - (A) All interior and exterior nursing facility lighting shall be designed to reduce glare.
 - (B) Each space occupied by persons, machinery, equipment within the nursing facility, and approaches to the nursing facility and parking lots shall have lighting.
 - (C) Each corridor and stairway shall remain lighted at all times.
 - (D) Each resident room shall have general lighting and night lighting. The nursing facility shall have a reading light for each resident. At least one light fixture for night lighting shall be switched at the entrance to each resident's room. All switches for the control of lighting in resident areas shall be of the quiet-operating type.
 - (E) Each light located in a resident-use area shall be equipped with a shade, globe, grid, or glass panel.
 - (F) Each light fixture in wet areas, including kitchens and showers, shall be vapor-resistant and shall have cleanable, shatter-resistant lenses and no exposed lamps.
- (c) Finishes.
 - (1) Flooring.
 - (A) Each floor surface shall be easily cleaned and maintained for the location.

(B) If the area is subject to frequent wet-cleaning methods, the floor surface shall not be physically affected by germicidal or other types of cleaning solutions.

(C) Each floor surface, including tile joints used in areas for food preparation or food assembly, shall be water-resistant, greaseproof, and resistant to food acids. Floor construction in dietary and food preparation areas shall be free of spaces that can harbor rodents and insects.

(D) Each flooring surface, including wet areas in kitchens, showers, and bath areas, entries from exterior to interior spaces, and stairways and ramps, shall have slip-resistant surfaces.

(E) All floor construction and joints of structural elements that have openings for pipes, ducts, and conduits shall be tightly sealed to prevent entry of rodents and insects.

(F) Highly polished flooring or flooring finishes that create glare shall be avoided.

(G) Each flooring surface shall allow for ease of ambulation and movement of all wheeled equipment used by residents or staff and shall provide for smooth transitions between differing floor surfaces.

(H) Each threshold and expansion joint shall be designed to accommodate rolling traffic and prevent tripping.

(I) Each carpet and carpet with padding in all resident-use areas shall be glued down or stretched taut and free of loose edges or wrinkles to avoid hazards or interference with the operation of lifts, wheelchairs, walkers, wheeled carts, and residents utilizing orthotic devices.

(2) Walls, wall bases, and wall protection.

(A) Each wall finish shall be washable and, if located near plumbing fixtures, shall be smooth and moisture-resistant.

(B) Wall protection and corner guards shall be durable and scrubbable.

(C) Each wall base in areas that require frequent wet cleaning, including kitchens, clean and soiled workrooms, and housekeeping rooms, shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor rodents and insects.

(D) All wall construction, finish, and trim in dietary and food storage areas shall be free from spaces that can harbor rodents, insects, and moisture.

(E) Each wall opening for pipes, ducts, and conduits and the joints of structural elements shall be tightly sealed to prevent entry of rodents and insects.

(F) Highly polished walls or wall finishes that create glare shall be avoided.

(3) Ceilings.

(A) The finish of each ceiling in resident-use areas and staff work areas shall be easily cleanable.

(B) Each ceiling in dietary, food preparation, food assembly, and food storage areas shall have a finished ceiling covering all overhead pipes and ducts. The ceiling finish shall be washable or easily cleaned by dustless methods, including vacuum cleaning.

(C) Each ceiling opening for pipes, ducts, and conduits and all joints of structural elements shall be tightly sealed to prevent entry of rodents and insects.

(D) Impervious ceiling finishes that are easily cleaned shall be provided in each soiled workroom, housekeeping room, and bathing room.

(E) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire protection.

Credits: (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-305. Nursing facility physical environment; mechanical, electrical, and plumbing systems. (a) Applicability. This regulation shall apply to all nursing facilities.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum.

(1) Each nursing facility shall meet the requirements of the national fire protection association's NFPA 101 "life safety code" (LSC), as adopted by reference in K.A.R. 26-39-105.

(2) Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the requirements of the "international building code" (IBC), as adopted by reference in K.A.R. 26-39-105.

(3) Each nursing facility and each portion of each nursing facility that was approved under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure, unless otherwise indicated.

(4) Each nursing facility shall have a complete set of manufacturer's operating, maintenance, and preventive maintenance instructions for each piece of building, mechanical, dietary, and laundry equipment.

(c) Heating, ventilation, and air conditioning systems. Each nursing facility's heating, ventilation, and air conditioning systems shall be initially tested, balanced, and operated to ensure that system performance conforms to the requirements of the plans and specifications.

(1) Each nursing facility shall have a test and balance report from a certified member of the national environmental balancing bureau or the associated air balance council and shall maintain a copy of the report for inspection by department personnel.

(2) Each nursing facility shall meet the minimum ventilation rate requirements in table 1a. If the building was licensed as a nursing facility on the effective date of this regulation, the minimum ventilation rate requirements shall be the levels specified in table 1b.

(3) Each nursing facility shall have a heating, ventilation, and air conditioning system designed to maintain a year-round indoor temperature range of 70°F to 85°F in resident care areas.

(d) Insulation. Each nursing facility shall have insulation surrounding the mechanical, electrical, and plumbing equipment to conserve energy, protect residents and personnel, prevent vapor condensation, and reduce noise. Insulation shall be required for the following fixtures within the nursing facility:

(1) All ducts or piping operating at a temperature greater than 100F; and

(2) all ducts or pipes operating at a temperature below ambient at which condensation could occur.

(e) Plumbing and piping systems. The water supply systems of each nursing facility shall meet the following requirements:

(1) Water service mains, branch mains, risers, and branches to groups of fixtures shall be valved. A stop valve shall be provided at each fixture.

(2) Backflow prevention devices or vacuum breakers shall be installed on hose bibs, janitors' sinks, bedpan flushing attachments, and fixtures to which hoses or tubing can be attached.

(3) Water distribution systems shall supply water during maximum demand periods at sufficient pressure to operate all fixtures and equipment.

(4) Water distribution systems shall provide hot water at hot water outlets at all times. A maximum variation of 98°F to 120°F shall be acceptable at bathing facilities, at sinks in resident-use areas, and in clinical areas. At least one sink in each dietary services area not designated as a hand-washing sink shall have a maximum water temperature of 120°F.

(5) Water-heating equipment shall have sufficient capacity to supply hot water at temperatures of at least 120°F in dietary and laundry areas. Water temperature shall be measured at the hot water point of use or at the inlet to processing equipment.

(f) Electrical requirements. Each nursing facility shall have an electrical system that ensures the safety, comfort, and convenience of each resident.

(1) Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits the panelboards serve. This requirement shall not apply to emergency system circuits.

(2) The minimum lighting intensity levels shall be the levels specified in table 2a. Portable lamps shall not be an acceptable light source to meet minimum requirements, unless specified in table 2a. If the building was licensed as a nursing facility on the effective date of this regulation, the minimum lighting intensity levels shall be the levels specified in table 2b.

(3) Each electrical circuit to fixed or portable equipment in hydrotherapy units shall have a ground-fault circuit interrupter.

(4) Each resident bedroom shall have at least one duplex-grounded receptacle on each side of the head of each bed and another duplex-grounded receptacle on another wall. A television convenience outlet shall be located on at least one wall. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, each resident bedroom shall have at least one duplex-grounded receptacle.

(5) Duplex-grounded receptacles for general use shall be installed a maximum of 50 feet apart in all corridors and a maximum of 25 feet from the ends of corridors.

(g) Emergency power. Each nursing facility shall have an emergency electrical power system that can supply adequate power to operate all of the following:

- (1) Lighting of all emergency entrances and exits, exit signs, and exit directional lights;
- (2) equipment to maintain the fire detection, alarm, and extinguishing systems;

- (3) exterior electronic door monitors;
- (4) the call system;
- (5) a fire pump, if installed;
- (6) general illumination and selected receptacles in the vicinity of the generator set;
- (7) the paging or speaker system if the system is intended for communication during an emergency; and

(8) If life-support systems are used, an emergency generator. The emergency generator shall be located on the premises and shall meet the requirements of the LSC, as adopted by reference in K.A.R. 26-39-105.

(h) Reserve heating. Each nursing facility's heating system shall remain operational under loss of normal electrical power. Each nursing facility shall have heat sources adequate in number and arrangement to accommodate the nursing facility's needs if one or more heat sources become inoperable due to breakdown or routine maintenance.

(i) Preventive maintenance program. Each nursing facility shall have a preventive maintenance program to ensure that all of the following conditions are met:

- (1) All electrical and mechanical equipment is maintained in good operating condition.
 - (2) The interior and exterior of the building are safe, clean, and orderly.
 - (3) Resident care equipment is maintained in a safe, operating, and sanitary condition.
- (j) Tables.

Table 1a Pressure Relationships and Ventilation of Certain Areas

Room Name or Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Resident's room:					
General	al	2	4	Optional	Optional
Bed	al	2	4	Optional	Optional
Toilet room	Negative	Optional	10	Yes	No
Medication room	Positive	2	4	Optional	Optional
Consultation room	al	2	6	Optional	Optional
Clean workroom	Positive	2	4	Optional	Optional
Soiled workroom	Negative	2	10	Yes	No
Housekeeping	Negative	Optional	10	Yes	No
Public restroom	Negative	Optional	10	Yes	No
Living, dining, and recreation room	al	2	4	Optional	Optional
Nourishment area	al	2	4	Optional	Optional
Kitchen and other food preparation and serving areas	al	2	10	Yes	Yes
Warewashing room	Negative	Optional	10	Yes	Yes
Food storage (nonrefrigerated)	al	Optional	2	Yes	No
Den	al	2	4	Optional	Optional
Central bath and showers	Negative	Optional	10	Yes	No
Soiled Linen Sorting and Storage	Negative	Optional	10	Yes	No
Laundry, Processing	al	2	10	Yes	No
Clean Linen Storage	Positive	Optional	2	Yes	No
Multipurpose room	al	2	4	Optional	Optional
Rehabilitation room	Negative	2	6	Optional	Optional
Beauty and barber shop	Negative	2	10	Yes	No
Corridors	al	Optional	2	Optional	Optional
Designated smoking area	Negative	Optional	20	Yes	No

Table 1b Pressure Relationships and Ventilation of Certain Areas

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Resident's Room	Equal	2	2	Optional	Optional
Resident Area Corridor	Equal	Optional	2	Optional	Optional
Examination and Treatment Room	Equal	2	6	Optional	Optional
Physical Therapy	Negative	2	6	Optional	Optional
Activities Room	Negative	2	6	Optional	Optional
Soiled Workroom	Negative	2	10	Yes	No
Medicine Preparation and Clean Workroom	Positive	2	4	Optional	Optional
Toilet Room	Negative	Optional	10	Yes	No
Bathroom	Negative	Optional	10	Yes	No
Janitors' Closets	Negative	Optional	10	Yes	No
Linen and Trash Chute Rooms	Negative	Optional	10	Yes	No
Food Preparation Center	Equal	2	10	Yes	No
Warewashing Room	Negative	Optional	10	Yes	No
Dietary Dry Storage	Equal	Optional	2	Yes	No
Laundry, Processing Room	Equal	2	10	Yes	No
Soiled Linen Sorting and Storage	Negative	Optional	10	Yes	No
Clean Linen Storage	Positive	Optional	2	Optional	Optional
Personal Care Room	Negative	2	6	Yes	No
Designated Smoking Area	Negative	Optional	20	Yes	No

Table 2a Artificial Light Requirements

Place	Light Measured in Foot-Candles	Where Measured
Resident's room:		
General	30	Three feet above floor
Bed	30	Mattress top level, at bed wall to three feet out from bed wall
Toilet room	30	Three feet above floor
Medication preparation	30	Counter level
Nurses' work area and office:		
General	30	Three feet above floor
Desk and charts	50	Desk level
Medication room	100	Counter level
Consultation room	30	Three feet above floor
Clean and soiled workrooms	30	Counter level
Storage room	30	Three feet above floor
Housekeeping	30	Three feet above floor
Public restroom	30	Floor level
Living, recreation rooms	30	Three feet above floor
Dining room	50	Table level
Nourishment area	50	Counter level
Kitchen in a resident unit	50	Counter level
Central kitchen (includes food preparation and serving areas)	70	Counter level
Food storage (nonrefrigerated)	30	Three feet above floor
Den	30	Chair or table level
Reading and other specialized areas (may be portable lamp)	70	Chair or table level
Central bath and showers	30	Three feet above floor
Laundry	30	Three feet above floor
Multipurpose room	30	Three feet above floor
Rehabilitation room	30	Three feet above floor
Beauty and barber shop	50	Counter level
Corridors:		
Resident waking hours	30	Floor level
Resident sleeping hours	10	Floor level
Stairways	20	Step level
Exits:		
Resident waking hours	30	Floor level
Resident sleeping hours	10	Floor level
Maintenance service and equipment area	30	Floor level
Heating plant space	30	Floor level

Table 2b Artificial Light Requirements

Place	Light Measured in Foot-Candles	Where Measured
Kitchen in a resident unit	50	Counter level
Central kitchen (includes food preparation and serving areas)	70	Counter level
Dining Room	25	Table level
Living room or recreation room		
General	15	Three feet above floor
Reading and other specialized areas (may be portable lamp)	50	Chair or table level
Nurses' station and office:		
General	20	Three feet above floor
Desk and charts	50	Desk level
Clean workroom	30	Counter level
Medication room	100	Counter level
Central bath and showers	30	Three feet above floor
Resident's room:		
General	10	Three feet above floor
Bed	30	Mattress top level, at bed wall to three feet out from bed wall
Laundry	30	Three feet above floor
Janitor's closet	15	Three feet above floor
Storage room:		
General	5	Three feet above floor
Disinfectant or cleaning agent storage area	15	Three feet above floor
Corridors	10	Floor level
Stairways	20	Step level
Exits	5	Floor level
Heating plant space	5	Floor level

History: Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

28-39-164. Definitions. (a) “Adult care home” means any facility that meets the definition specified in K.A.R. 28-39-144.

(b) “Clinical instruction” means training in which the trainee demonstrates knowledge and skills while performing tasks on an individual under the direct supervision of the course instructor. Clinical instruction may be performed in any of the following settings:

- (1) An adult care home;
- (2) a long-term care unit of a hospital; or
- (3) a simulated laboratory.

(c) “Department” means Kansas department of health and environment.

(d) “Direct care” means assistance provided in activities of daily living. These activities shall include grooming, eating, toileting, transferring, and ambulation.

(e) “Direct supervision” means that the supervisor is on the facility premises and is readily accessible for one-on-one consultation, instruction, and assistance, as needed.

(f) “Eligible for employment,” when describing a certified nurse aide, means that the certified nurse aide meets the following criteria:

(1) Has been employed to perform nursing or nursing-related services for at least eight hours in the preceding 24 months;

(2) has no record of abuse, neglect, and exploitation; and

(3) is not prohibited from employment based upon criminal convictions pursuant to K.S.A. 39-970, and amendments thereto.

(g) “Instructor” means an individual who has been approved by the secretary to teach nurse aide, home health aide, or medication aide training courses.

(h) “Licensed nursing experience” means experience as a registered nurse or licensed practical nurse.

(i) “Nurse aide trainee I” means an individual in the process of completing part I of a 90-hour nurse aide course as specified in K.A.R. 28-39-165.

(j) “Nurse aide trainee II” means an individual who has successfully completed part I of a 90-hour nurse aide course specified in K.A.R. 28-39-165 or whose training has been endorsed as specified in K.A.R. 28-39-167.

(k) “Secretary” means secretary of the Kansas department of health and environment.

(l) “Simulated laboratory” means an enclosed area that is in a school, institution, adult care home, or other facility and that is similar to an adult care home residential room. In a simulated laboratory, trainees practice and demonstrate basic nurse aide skills while an instructor observes and evaluates the trainees.

History: (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-165 Nurse aide training program. (a) Requirements. Unlicensed employees who provide direct individual care to residents shall be required to perform the following:

(1) Successfully complete at least a 90-hour nurse aide course that has been approved by the secretary; and

(2) pass a state test as specified in K.A.R. 28-39-168.

(b) Certification. Each person shall be issued a nurse aide certificate by the secretary and shall be listed on a public registry upon completion of the requirements specified in subsection (a).

(c) Employment as a trainee.

(1) Each nurse aide trainee I in an approved 90-hour course shall be required to successfully complete part I of the course to demonstrate initial competency before being employed or used as a nurse aide trainee II. A nurse aide trainee II may provide direct care to residents only under the direct supervision of a registered nurse or licensed practical nurse.

(2) Each nurse aide trainee II in an approved 90-hour course shall be issued a nurse aide certificate by the secretary, upon completion of the requirements specified in subsection (a), within four months from the beginning date of the initial course in order to continue employment providing direct care. Nurse aide trainee II status for employment shall be for one four-month period only.

(d) 90-hour nurse aide course.

(1) Each nurse aide course shall be prepared and administered in accordance with the guidelines established by the department in the "Kansas certified nurse aide curriculum guidelines (90 hours)," including the appendices, dated May 2008, and the "Kansas 90-hour certified nurse aide sponsor and instructor manual," pages 1 through 20 and the appendices, dated May 2008, which are hereby adopted by reference.

(2) Each nurse aide course shall consist of a combination of didactic and clinical instruction. At least 50 percent of part I and part II of the course curriculum shall be provided as clinical instruction.

(3) Each nurse aide course shall be sponsored by one of the following:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a postsecondary school under the jurisdiction of the state board of regents.

(4) Clinical instruction shall be conducted in one or a combination of the following locations:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a simulated laboratory.

(5) An adult care home shall not sponsor or provide clinical instruction for a 90-hour nurse aide course if that adult care home has been subject to any of the sanctions under the medicare certification regulations listed in 42 C.F.R. 483.151(b)(2), as in effect on October 1, 2007.

(e) Correspondence courses. No correspondence course shall be approved as a nurse aide course.

(f) Other offerings. Distance-learning offerings and computer-based educational offerings shall meet the standards specified in subsection (d).

History: (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-166. Nurse aide course instructor. (a) Approval and qualifications.

(1) Each person who intends to be a course instructor shall submit a completed instructor approval application form to the department at least three weeks before offering an initial course and shall receive approval as an instructor before the first day of an initial course.

(2) Each course instructor shall be a registered nurse with a minimum of two years of licensed nursing experience, with at least 1,750 hours of experience in either or a combination of an adult care home or long-term care unit of a hospital. Each course instructor shall have completed a course in teaching adults, shall have completed a professional continuing education offering on supervision or adult education, or shall have experience in teaching adults or supervising nurse aides.

(b) Course instructor and course sponsor responsibilities.

(1) Each course instructor and course sponsor shall be responsible for ensuring that the following requirements are met:

(A) A completed course approval application form shall be submitted to the department at least three weeks before offering a course. Approval shall be obtained from the secretary at the beginning of each course whether the course is being offered initially or after a previous approval. Each change in course location, schedule, or instructor shall require approval by the secretary.

(B) All course objectives shall be accomplished.

(C) Only persons in health professions having the appropriate skills and knowledge shall be selected to conduct any part of the training. Each person shall have at least one year of experience in the subject area in which that person is providing training.

(D) Each person providing a part of the training shall do so only under the direct supervision of the course instructor.

(E) The provision of direct care to residents by a nurse aide trainee II during clinical instruction shall be limited to clinical experiences that are for the purpose of learning nursing skills under the direct supervision of the course instructor.

(F) When providing clinical instruction, the course instructor shall perform no other duties but the direct supervision of the nurse aide trainees.

(G) Each nurse aide trainee in the 90-hour nurse aide course shall demonstrate competency in all skills identified on the part I task checklist before the checklist is signed and dated by the course instructor as evidence of successful completion of part I of the course.

(H) The course shall be prepared and administered in accordance with the guidelines in the “Kansas certified nurse aide curriculum guidelines (90 hours)” and the “Kansas 90-hour certified nurse aide sponsor and instructor manual,” as adopted in K.A.R. 28-39-165.

(2) Any course instructor or course sponsor who does not meet the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

History: (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-167. Out-of-state and allied health training endorsement for nurse aide. (a) Each person whom the secretary has determined to have successfully completed training or passed a test, or both, that is equivalent to the training or test required by this state may be employed without taking this state's test.

(b) Each person whom the secretary has determined not to be exempt from examination pursuant to subsection (a) but who meets any one of the following requirements shall be deemed to have met the requirements specified in K.A.R. 28-39-165 if that person passes a state test as specified in K.A.R. 28-39-168:

(1) Each person who has received nurse aide training in another state, is listed on another state's registry as a nurse aide, and is eligible for employment as a nurse aide shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168. Each person whose training in another state is endorsed and who has passed the state test shall be issued a nurse aide certificate.

(2) Each person who meets any of the following criteria shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168:

(A) Has completed training deemed equivalent to the requirements specified in K.A.R. 28-39-165;

(B) is currently licensed in Kansas or another state to practice as a registered nurse, licensed practical nurse, or licensed mental health technician, with a license that has not been suspended or revoked; or

(C) has a license to practice as a registered nurse, licensed practical nurse, or licensed mental health technician that has expired within the 24-month period before applying for equivalency, but has not been suspended or revoked.

(3) Each person who has received training from an accredited nursing or mental health technician training program within the 24-month period before applying for equivalency and whose training included a basic skills component comprised of personal hygiene, nutrition and feeding, safe transfer and ambulation techniques, normal range of motion and positioning, and a supervised clinical experience in geriatrics shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168.

(c) Each person qualified under subsection (a) shall receive written notification from the department of exemption from the requirement to take this state's test and the fact that the person is eligible for employment.

(d) Each person qualified under subsection (b) shall receive written approval from the department or its designated agent to take the state test. Upon receiving written approval from the department or its designated agent to take the state test, that person may be employed by an adult care home as a nurse aide trainee II to provide direct care under the direct supervision of a

registered nurse or licensed practical nurse. Each person employed as a nurse aide trainee II shall be issued a nurse aide certificate by the secretary, upon completion of the requirements specified in K.A.R. 28-39-165, within one four-month period starting from the date of approval, in order to continue employment providing direct care.

History: (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-168 State nurse aide test. (a) Composition of state nurse aide test. The state test shall be comprised of 100 multiple-choice questions. A score of 75 percent or higher shall constitute a passing score.

(b) State nurse aide test eligibility.

(1) Only persons who have successfully completed an approved 90-hour nurse aide course or completed education or training that has been endorsed or deemed equivalent as specified in K.A.R. 28-39-167 shall be allowed to take the state test.

(2) Each person shall have a maximum of three attempts within 12 months from the beginning date of the course to pass the state test after completing an approved 90-hour course as specified in K.A.R. 28-39-165.

(3) If the person does not pass the state test within 12 months after the starting date of taking an approved 90-hour course, the person shall retake the entire course.

(4) If a person whose education or training has been endorsed or deemed equivalent as specified in K.A.R. 28-39-167 and the person does not pass the state test on the first attempt, the person shall successfully complete an approved 90-hour nurse aide course as specified in K.A.R. 28-39-165 to retake the state test. Each person whose training was endorsed or deemed equivalent, who failed the state test, and who has successfully completed an approved nurse aide course shall be eligible to take the test three times within a year after the beginning date of the course.

(c) Application fee.

(1) Each nurse aide trainee shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable application fee shall be required each time the test is scheduled to be taken. Each person who is scheduled to take the state test, but fails to take the state test, shall submit another fee before being scheduled for another opportunity to take the test.

(2) Each course instructor shall collect the application fee for each nurse aide candidate eligible to take the state test and shall submit the fees, class roster, application forms, and accommodation request forms to the department or its designated agent.

(d) Each person who is eligible to take the state test and who has submitted the application fee and application form shall be issued written approval, which shall be proof of eligibility to sit for the test.

(e) Test accommodation.

(1) Any reasonable test accommodation or auxiliary aid to address a disability may be requested by any person who is eligible to take the state test. Each request for reasonable

accommodation or auxiliary aid shall be submitted each time a candidate is scheduled to take the test.

(2) Each person requesting a test accommodation shall submit an accommodation request form along with an application form to the instructor. The instructor shall forward these forms to the department or its designated agent at least three weeks before the desired test date. Each instructor shall verify the need for the accommodation by signing the accommodation request form.

(3) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency.

(f) This regulation shall not apply to any person who meets the requirement of K.A.R. 28-39-167(a).

History: (Authorized by K.S.A. 2008 Supp. 39-925(d)(2) and 39-936; implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

28-39-169a. Medication aide. (a) Each medication aide candidate shall be either a nurse aide who has been issued a certificate by the secretary or a qualified mental retardation professional as defined in 42 C.F.R. 483.430(a), revised October 1, 2010 and hereby adopted by reference, and shall meet the following requirements:

- (1) Has completed a course in medication administration approved by the secretary; and
- (2) has passed a state test as approved by the secretary.

(b) Each person who has met one of the following requirements shall be eligible to enroll in a medication aide course:

- (1) Is a nurse aide who has a Kansas nurse aide certificate and who has been screened and tested for reading comprehension at an eighth-grade level; or
- (2) is a qualified mental retardation professional employed by an intermediate care facility for the mentally retarded.

(c) A qualified mental retardation professional who is not a nurse aide, who has completed a course in medication administration as approved by the secretary, and who has passed the state test shall be allowed to administer medications only to residents in an intermediate care facility for the mentally retarded.

(d) (1) Each medication aide course shall meet the following requirements:

(A) Consist of a minimum of 75 total hours, which shall include a minimum of 25 hours of clinical instruction;

(B) be prepared and administered in accordance with the guidelines prescribed by the secretary and follow the content outlined in the “Kansas certified medication aide curriculum” and appendices, dated February 2011, and the “Kansas certified medication aide sponsor and

instructor manual,” pages 2 through 21, dated February 2011, which are hereby adopted by reference; and

(C) be sponsored by one of the following:

- (i) A postsecondary school under the jurisdiction of the state board of regents;
- (ii) a state-operated institution for the mentally retarded; or
- (iii) a professional health care association approved by the secretary.

(2) No correspondence course shall be approved as a medication aide course.

(3) Distance-learning and computer-based educational offerings shall be required to meet the requirements specified in this subsection.

(e) Each medication aide course instructor shall meet the following requirements:

(1) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(2) Each instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor.

(f) Each course sponsor and course instructor shall be responsible for ensuring that the following requirements are met:

(1) Only persons who meet the qualifications specified in subsection (b) shall be eligible to take the course.

(2) Each trainee shall be screened and tested for comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(3) The course shall be prepared and administered in accordance with the guidelines and follow the content in the “Kansas certified medication aide curriculum” and the “Kansas certified medication aide sponsor and instructor manual,” as adopted in subsection (d).

(4) The clinical instruction and skills performance involving the administering of medications shall be under the direct supervision of the course instructor.

(5) During the clinical instruction and skills performance, the course instructor shall perform no other duties than the provision of direct supervision to the trainees.

(g) Any course instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) Any person whose education or training has been deemed equivalent to the medication aide course by an approved sponsor as specified in paragraph (d)(1)(C) may apply to take the state test to become certified as a medication aide. Before requesting a determination of equivalency for a person's education or training, that person shall be a Kansas-certified nurse aide and shall meet one of the following conditions:

(1) The person is currently credentialed to administer medications in another state. The secretary or the designated agent shall evaluate that state's credentialed training for equivalency in content and skills level to the requirements for certification as a medication aide in Kansas.

(2) The person is currently enrolled in an accredited practical nursing or professional nursing program and has completed a course of study in pharmacology with a grade of C or better.

(3) The person is currently licensed in Kansas or another state, or has been licensed within 24 months from the date of application, as a licensed mental health technician, and there are no pending or current disciplinary actions against the individual's license.

(4) The person has been licensed in Kansas or another state, within 24 months from the date of application, as a licensed practical nurse whose license is inactive or a registered nurse whose license is inactive, and there are no pending or current disciplinary actions against the individual's license.

History: (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

28-39-169b. State medication aide test. (a) The state test shall be administered by the secretary or the designated agent and in accordance with guidelines prescribed by the secretary as outlined in the “certified medication aide test manual” on pages 24 through 31 of the “Kansas certified medication aide sponsor and instructor manual,” dated February 2011. These pages are hereby adopted by reference.

(1) Each person who has completed the medication aide course as specified in K.A.R. 28-39-169a shall have a maximum of two attempts to pass the state test within 12 months after the first day of the course. If the person does not pass the test within this 12-month period, the course shall be retaken. Each time the person successfully completes the course, the person shall have two attempts to pass the state test within 12 months after the first day of the course. The number of times a person may retake the course shall be unlimited.

(2) Each person who is a Kansas-certified nurse aide and whose training has been deemed equivalent to the Kansas medication aide course shall have a maximum of one attempt to pass the test within 12 months after the date the equivalency is approved. If the person does not pass the test within this 12-month period, the person shall be required to take the medication aide course.

(3) There shall be three different forms of the state test. The different forms of the test shall be used on an alternating basis. Each of the three forms shall be comprised of 85 multiple-choice questions. The passing score for each of the three forms of the test shall be 65 or higher.

(4) Only persons who have met the requirements specified in K.A.R. 28-39-169a(a)(1) and (h) shall be eligible to take the state test.

(5) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability

with regard to accommodation. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency.

(b) Each person shall be issued a medication aide certificate by the secretary and shall be listed on a public nurse aide registry upon successful completion of the requirements specified in K.A.R. 28-39-169a(a) and (h).

(c) The course instructor shall submit to the secretary a course roster of names, an application form, and a non-refundable application fee of \$20.00 for each medication aide who has completed the course and passed the state test.

(d) A replacement medication aide certificate for a medication aide whose certification is current shall be issued by the secretary upon the receipt and processing of a certificate replacement form and a nonrefundable fee of \$20.00.

History: (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

28-39-169c. Medication aide continuing education. (a) Each person who has a certificate of completion for a medication aide training course as specified in K.A.R. 28-39-169a and who wishes to maintain the certificate shall complete, every two years, a program of 10 hours of continuing education approved by the secretary.

(b) The continuing education requirement shall include one or more of the following topics:

- (1) Classes of drugs and new drugs;
- (2) new uses of drugs;
- (3) methods of administering medications;
- (4) alternative treatments, including herbal drugs and their potential interaction with traditional drugs;
- (5) safety in the administration of medications; or
- (6) documentation.

(c) Each program of continuing education shall be sponsored by one of the following:

- (1) A postsecondary school under the jurisdiction of the state board of regents;
- (2) an adult care home;
- (3) a long-term care unit of a hospital;
- (4) a state-operated institution for the mentally retarded; or
- (5) a professional health care association approved by the secretary.

(d) Each course instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse or a licensed practical nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may be selected to conduct part of the training under the supervision of the instructor.

(e) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(f) Each sponsor and course instructor of continuing education shall be responsible for ensuring that the following requirements are met:

(1) The course shall be prepared and administered as prescribed by regulation and the "Kansas certified medication aide sponsor and instructor manual," as adopted in K.A.R. 28-39-169a.

(2) A course approval application form shall be submitted to the secretary at least three weeks before offering a course, and course approval shall be required to be received before beginning the course.

(3) A course roster of names, a renewal application form, and a nonrefundable renewal application fee of \$20.00 for each medication aide who has completed the course shall be submitted to the secretary.

(4) If clinical instruction in administering medications is included in the program, each student administering medications shall be under the direct supervision of the registered nurse instructor.

(g) Any sponsor or instructor who does not fulfill the requirements specified in subsections (d), (e), and (f) may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) College credits or vocational training may be approved by the secretary as substantially equivalent to medication aide continuing education. The instructor or nursing program coordinator shall submit a department-approved form attesting that the course content is substantially equivalent to the topics listed in paragraphs (b)(1) through (6).

(i) Each certified medication aide shall be responsible for notifying the secretary of any change in the aide's address or name.

(j) No correspondence course shall be approved for a medication aide continuing education course.

(k) Distance-learning educational offerings and computer-based educational offerings shall meet the requirements specified in subsections (b), (c), (d), (e), (f), and (g).

(l) Each medication aide certificate shall be renewed upon the department's receipt from the course instructor of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of \$20.00.

(m) Each medication aide certificate or renewed certificate shall be valid for two years from the date of issue.

(n) Each applicant for renewal of certification shall have completed the required number of hours of documented and approved continuing education during each certification period

immediately preceding renewal of the certificate. Approved continuing education hours completed in excess of the requirement shall not be carried over to a subsequent renewal period.

(o) Each medication aide certificate that has been expired for three or fewer years shall be reinstated upon the department's receipt of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education. This continuing education shall have been completed within the three-year period following expiration of the certification;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of \$20.00.

(p) Each lapsed certificate renewed within the three-year period specified in subsection

(o) shall be valid for two years from the date of issuance.

(q) Each person whose medication aide certification has been expired for more than three years shall be required to retake the 75-hour medication aide course.

Credits: (Authorized by K.S.A. 65-1,121 and 75-5625; implementing K.S.A. 65-1,121 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

Survey, Certification and Credentialing Commission
612 S. Kansas Ave.
Topeka, Kansas 66603
(785) 296-4986