



REVISED STATE WAIVER REQUEST INCORPORATING FEDERAL BLANKET WAIVERS ISSUED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS) ON MARCH 30, 2020.

In order to avoid confusion and dual regulatory standards for long term care providers, we ask that the Governor waive any state regulations that mirror the CMS blanket waivers issued on March 30, 2020. To assist in the process we have revised our original state waiver request to identify where Kansas adult care home regulations cross paths with the federal waiver.

Red Text identifies federal blanket waiver that correlates with our state waiver request

Blue Text identifies a new state waiver request correlated with the federal blanket waiver

March 30, 2020

Dear Governor Kelly:

As we continue to face down the unprecedented COVID-19 pandemic, we appreciate your leadership in this tough time, and your dedication to serving the needs of Kansans and the health care providers they rely on. In this time of national public health emergency, adult care homes are facing a growing staffing crisis. As resident care needs grow and efforts to prevent and mitigate the spread of the virus intensify, staff members across disciplines and job types continue to be quarantined due to exposure or symptoms, fall ill, or are required to stay home to provide child care as schools close or care for ill or frail loved ones. Providers need relief from certain requirements and flexibility to ensure they are able to use every available resource to meet residents' needs in this critical time. This will include waivers of some adult care home regulations, expedited licensure processes, and flexibility to change physical environment and resident capacity in order to serve and protect the population most vulnerable to the COVID-19 virus.

On behalf of the adult care homes in our state, LeadingAge Kansas, Kansas Health Care Association and Kansas Adult Care Executives respectfully request that the State of Kansas waive or alter the statutory and regulatory issues identified below in response to the COVID-19 state of emergency.

Adult Care Home Licensing

To ensure continued availability of long term care services, we ask that the state allow all adult care home licenses to remain in effect until 30 days after the COVID-19 emergency disaster declaration is lifted. We further request a waiver for the following requirements:

- Approval by the Office of the State Fire Marshal for initial licensure applications, renewal applications, and applications for provisional licenses (See K.S.A. 39-928, K.S.A. 39-929)
- Adult care home licensure fees (See K.S.A. 39-930)
- Six month limitation on provisional adult care home licenses (See K.S.A. 39-929)
- Agency approval for change in use of required room (See K.A.R. 26-39-101(f))
 - CMS has waived 42 CFR 483.90 to allow nursing homes to use dining rooms, conference rooms and other non-resident care areas as emergency resident care rooms to address surge capacity issues.
- Agency approval for change in resident capacity, and restriction of when capacity changes go into effect (See K.A.R. 26-39-101(h))
- Restrictions on administrators and operators supervising more than one adult care home (See K.A.R. 26-39-101(i); K.A.R. 28-39-163(a)(4))
- License application fees and change in resident capacity fees (See K.A.R. 26-39-101(k))

Individual Licensing

In order to increase the capacity of our long term care system to respond to COVID-19 care needs, we request that emergency temporary licenses, registrations, and certifications be implemented for the following out-of-state long term care workforce:

- Adult care home administrators
- Certified nurse aides
- Certified medication aides
- Home health aides
- Operators
- Certified Dietary Managers
- Dietitians
- Social workers
- Nurses (RN, LPN, APRN)

We request that the following licenses, registrations, and certifications remain in effect until the COVID-19 emergency declaration is lifted:

- Adult care home administrators
- Certified nurse aides
- Certified medication aides
- Home health aides
- Operators
- Dietitians
- Certified Dietary Managers
- Therapists (OT, PT)
- Pharmacists
- Social workers
- Physician Assistants

- Nurses (RN, LPN, APRN)

We request that the state waive or allow for the extension of annual continuing education requirements for all disciplines within adult care homes as long as current licensure requirements are in good standing, including:

- Adult care home administrators
- Operators
- Certified nurse aides
- Certified medication aides
- Home health aides
- Dietitians
- Therapists (PT, OT, SP)
- Certified Dietary Managers
- Pharmacists
- Social workers
- Nurses (RN, LPN, APRN, PA)

As long as a person was in good standing prior to lapsing, we request a waiver of all reinstatement requirements and restrictions (including refresher courses, continuing education and fees) for all licenses, registrations, and certifications governed by KDADS Health Occupations Credentialing, the Board of Adult Care Home Administrators and the Kansas State Board of Nursing.

We request a waiver of background and fingerprint checks (if required) for licensure. Most background check and fingerprint locations are closed or have such a backlog that this essentially blocks any new health care workers from entering the workforce. We further request temporary licenses for all individuals who (a) let their license expire in the state; (b) have a license application pending in the state; or (c) completed their required course of training but who are waiting for test results or have not yet taken the state test. Licensed health professional categories for inclusion in this waiver request:

- Physicians (MD, DO, and physician assistants)
- Nurses (RN, LPN, APRN)
- Adult Care Home Administrators
- Pharmacists
- Social Workers
- Therapists (OT, PT)
- Dieticians

Nurse Licensing

We respectfully ask that the Kansas State Board of Nursing be required to follow the lead of the Kansas Board of Healing Arts and establish emergency temporary licenses for all nursing

categories governed by the Board of Nursing. Nurses are the backbone of health care, and temporary licenses are vital to increasing the capacity of our systems to respond to the COVID-19 crisis.

In response to the pandemic worsening an already painful nurse shortage in long term care, we further request the following:

- Waiver of continuing education component for reactivating inactive nursing licenses whose licenses have been inactive for less than 5 years
- Issue temporary automatic reactivation for nurses with an inactive license who certify they will provide services to a skilled nursing facility, assisted living facility, residential care home, or home plus facility with a staff shortage due to COVID-19
- Waive fees associated with reactivation and respond to applications on an expedited timeline
- Waive requirement for nurse refresher course for nurses with inactive nursing license of more than five years if they certify they will work for a skilled nursing facility, assisted living facility, or home health agency with a staffing shortage due to COVID-19.
- Waive continuing education requirements for nurses
- Allow nursing students attending programs outside the state of Kansas who are in the state temporarily, to provide care subject to supervision by a licensed nurse or physician assistant in skilled nursing facilities, assisted living, residential care and home plus settings with a staffing shortage
- Allow nursing students to assist to the maximum extent possible to fill in critical staffing shortages things like passing medications, giving injections, etc.

(See K.S.A. 65-1115; K.S.A. 65-1117; K.S.A. 65-1153; K.S.A. 65-1155)

Certified Nurse Aide Training

Certified Nurse Aides (CNAs) are the backbone of long term care. In order to ensure that the pipeline for such an important component of the long term care workforce remains open, we respectfully request the following:

- Allow Nurse Aide Trainee II workers to provide direct care to residents under supervision of a licensed nurse until the COVID-19 emergency declaration is lifted (See K.A.R. 26-50-20(c)(2))
 - CMS has granted a waiver matching this request at 42 CFR 483.35(d). Currently, KDADS guidance only allows Nurse Aide Trainees to work for an extra two months, and we ask that the guidance be updated to match the new federal waiver.
- Waive requirement for certified medication aide and certified nurse aide trainees to pass their nurse aide certification test within 12 months of their nurse aide training course until 30 days after the COVID-19 emergency declaration is lifted. (See K.A.R. 26-50-24; K.A.R. 26-50-34)
- Waive or allow flexibility in CNA course supervisor qualifications (See K.A.R. 26-50-22(a))
- Waive or expedite CNA course supervisor applications (See K.A.R. 26-50-22(b))
- Waive or allow flexibility in CNA course instructor qualifications (See K.A.R. 26-50-22(c))
- Waive or expedite CNA course application approvals (See K.A.R. 26-50-22(f))

We request that all waivers, flexibility and guidance issued by the Kansas Department for Aging and Disability Services for Certified Nurse Aides be applied equally to Certified Medication Aides and Home Health Aides.

Staffing Requirements

The long term care workforce has been in a crisis state for many years, and any worsening of the COVID-19 pandemic will make it highly unlikely that adult care homes will be able to maintain current levels of staffing in their buildings. Although adult care homes will continue striving to keep as much of their workforce as possible, they should not be penalized for the inevitably low numbers of staff available in a worldwide pandemic. Therefore, we respectfully request a waiver of all staffing requirements and duty restrictions contained in K.A.R. 28-39-154.

We are also concerned about delays in state background checks for long term care workers that could cause harmful delays in getting enough care to residents. Therefore we are requesting a waiver of K.S.A. 39-970(e) which limits provisional employment to a one-time basis of 60 days.

Staff Training Requirements

During the course of this pandemic, long term care resources will likely be stretched to the limit. Allowing flexibility in staff training will allow adult care homes to dedicate more resources to resident care and eliminate unnecessary delays in an already over-stressed system. We request a waiver for orientation requirements, competency evaluations, minimum in-service hours for all adult care home employees, and minimum in-service hours for direct care employees. (See K.A.R. 28-39-163(g))

Basic Care Aides

We respectfully ask the state of Kansas to authorize adult care homes to hire trained Basic Care Aides who are able to perform defined resident care procedures that do not require the skill or training required for a certified nurse aide, including but not limited to activities of daily living, infection prevention and control, documentation, and comfort care.

We further request the state to allow ancillary staff (e.g. housekeeping, laundry dietary, office, etc.) to serve as emergency staffing and assistance with light activities of daily living (ADL) care needs with proper safe patient handling training. For residents who only require minimal supervision or ADL assistance, we request an allowance for ancillary staff to assist residents with these minimal care needs under the supervision of facility clinical staff.

Physician Services

A worsening pandemic crisis will inevitably lead to a reduction in the availability of physician services. In order to maintain access to care for long term care residents, we are requesting waivers or flexibility in the following areas:

- Waive requirement that all care and treatment be under direction of a physician (See K.S.A. 39-936(e))

- Allow physicians to delegate any and all required tasks to non-employed and employed APRNs and PAs, including but not limited to orders for admission, orders and documentation for transfers and discharges, routine and emergency visits, certifications and recertifications, and orders for laboratory, radiology and diagnostic testing.

(See K.A.R. 26-39-102(e)(2); K.A.R. 28-39-155; K.A.R. 28-39-163(k)(3); K.A.R. 28-39-163(l)(3))

- If the state interprets K.A.R. 28-39-155 to require in-person visits from physicians, APRNs and PAs, we further request a waiver to allow all in-person visits to be conducted through telehealth.
 - CMS has waived 42 CFR 482.30 to allow all required in-person physician and non-physician practitioner visits to be conducted via telehealth

We also request a waiver or flexibility to extend time for physicians, APRNs and PAs to sign telephone orders. (See K.A.R. 28-39-155(b)(4); K.A.R. 28-39-156(b)(4))

Dental Services

In order to reduce exposure and better enforce resident isolation measures ordered by the state and federal government, we ask that the state temporarily waive the requirement as it relates to annual (nonemergency) dental visits. Providers would continue to be responsible for arranging for access to dental services for emergent needs. (See K.A.R. 28-39-159)

Dietary Services

In order to respond to workforce shortages, and to comply with augmented resident dining procedures under government-ordered isolation requirements, we request the state to provide expedited feeding assistant training, or waive the requirement for individuals to successfully completed a State-approved feeding assistance program in order to provide this care while under the supervision of facility clinical staff. Feeding assistants will not feed residents who require the assistance of staff with more specialized training, such as residents with recurrent lung aspirations, difficulty swallowing, on feeding tubes, and parenteral or IV feedings. (See K.A.R. 483.60(h)(1))

Tuberculosis Testing

In order to expedite resident admissions and employee onboarding, and relieve unnecessary burden on laboratory testing sites, we request a waiver of 2008 tuberculosis guidelines for adult care homes (adopted by reference in K.A.R. 26-39-105) and 2013 tuberculosis guidelines for adult care homes, in order to allow adult care homes to use the CDC's tuberculosis symptoms screening questionnaire in lieu of a two-step TST or IGRA test for new residents and employees.

Resident Rights

Care, services and policies must change quickly during an emergency situation, and certain resident rights are also required to be curtailed in order to maintain safety, resources and access to care for all residents and employees in the adult care home. We therefore request a waiver on the following issues:

- Requirement that facilities must provide 30 day notification to the resident, a family member or legal representative of the resident, of the transfer or discharge of the resident. **We further request waiver of K.A.R. 28-39-151(h)(2)(A) regarding required timeframes for resident care plans, in order to match federal waiver of same.**
 - CMS has waived specific transfer and discharge requirements for transfers to another facility for the purpose of resident cohorting (i.e. moving residents to other buildings in order to separate residents with quarantine and specialized service needs related to COVID-19) CMS waived requirements around advanced, written notice of transfer or discharge and required time frames for the completion of resident care plans.
- Requirement that a 30 day notice of change in services must be issued to a resident or their representative, and the requirement that such change shall not take place until 30 days after the notice is issued
- **We further request waiver of K.A.R. 28-39-151 regarding timeframe requirements for the completion of comprehensive assessments, quarterly review assessments and yearly assessments.**
 - CMS has waived the provisions of CFR 483.20 regarding timeframe requirements for the completion of comprehensive assessment, quarterly review assessments and yearly assessments.
- Requirement that an adult care home must make resident records available for inspection by the resident within two days
- Freedom of choice in attending physician, pharmacy and hospice provider, as well as personal privacy and confidentiality regarding personal and clinical records
- Immediate access and visitation rights
- **Participation in resident and family groups (See K.A.R. 28-39-153(c))**
 - CMS has waived 42 CFR 483.10(f)(5) to restrict resident rights to participate in resident groups, in order to follow restrictions on in-person gatherings and social distancing.

(See K.A.R. 26-39-102(f); K.A.R. 26-39-103; K.S.A. 39-936(f))

Resident Capacity Changes

In order to allow flexibility and expedited action in the midst of a pandemic crisis, and potential surge in COVID-19 infections within an adult care home, we ask that homes be allowed to exceed licensed bed capacity if the capability exists to care for additional residents in a safe manner. This would include a waiver for:

- Written requests and approval for changes in resident capacity
- Restriction in effective date of a resident capacity change to the first day of the month following approval
- Fees for change in resident capacity requests

(See K.A.R. 26-39-101)

We further request a waiver for any requirements relating to interfacility transfer to allow for maximum responsiveness and infection control measures.

Physical Environment

Adult care homes must be able to designate alternate sites for patient care without violating physical environment requirements. Waiver or flexibility on physical environment requirements would allow for appropriate quarantine, isolation, and recovery areas. It will also allow homes to expand overall capacity to meet possible high demand for services.

We request a waiver for all requirements found in K.A.R. 26-40-301; K.A.R. 26-40-302; K.A.R. 26-40-303; K.A.R. 26-40-304; K.A.R. 26-40-305; K.A.R. 28-39-437; K.A.R. 28-39-254; K.A.R. 28-39-255; K.A.R. 28-39-256; K.S.A. 39-939(a).

- In order to facilitate the new emphasis on cohorting of nursing home residents, and the need for isolation and step-down care sites, CMS has waived all nursing home physical environment requirements, including life safety code requirements and NFPA 101. (42 CFR 483.90)

Office of the State Fire Marshal

In order to preserve resident isolation safety requirements, expedite licensure issues, and create flexibility in physical environment needs, we request the following:

- The state of Kansas follow CMS guidance on survey prioritization (QSO-20-20-ALL), and suspend all surveys of adult care homes by the Office of the State Fire Marshal for NFPA 101 compliance
- Waive fire drill requirements for adult care homes until the emergency declaration has ended
- Waive NFPA 101 compliance for all isolation, recovery and excess capacity rooms and units

In order to facilitate the new emphasis on cohorting of nursing home residents, and the need for isolation and step-down care sites, CMS has waived all nursing home physical environment requirements, including life safety code requirements and NFPA 101. (42 CFR 483.90)

Activation of Workers Outside of Long Term Care

In order to expand access to additional assistance and workforce, we ask the that the state of Kansas allow use of medically trained National Guard members to augment facility staff in time of emergency. We further request that the state allow workers in other fields who are temporarily displaced by COVID-19 to work in long term care without losing unemployment benefits.

Child-Care for Adult Care Home Employees

The healthcare workforce is the frontline in fighting the pandemic, and there is a critical need for healthcare workers, including adult care home workers, to have access to child-care so they can come to work. In order to assure this, we request that the State allow:

- Temporary child-care programs for children of health care workers and first-responders. The programs could operate under reduced regulations focused solely on health and safety of the children, and quickly be approved with an expedited attestation process.

- Child-care stipends for direct health care workers targeted toward lower-wage workers such as certified nurse aides.

We also request that the Governor encourage school districts and health care organizations to coordinate teachers and older students who are interested in meeting health care worker child-care needs at the community level.

Home Health Agencies

In order to assure that Kansans in rural areas can receive home health services during the COVID-19 crisis we ask for a repeal of the requirement in KAR 28-51-100 that a branch office of a licensed home health agency must be within 100 miles of the parent agency.

Nursing Home Quality Care Assessment

Already in a precarious financial position, many adult care homes are facing skyrocketing costs for staffing and supplies. As the pandemic worsens, so will the financial strain on providers. Therefore, we ask that the Governor suspend all penalties and order maximum flexibility on payment plans for the Nursing Home Quality Care Assessment until the COVID-19 emergency declaration has been lifted.

We respectfully request that these waivers take effect immediately with a retroactive date of March 1, 2020. These measures will help adult care homes in Kansas have sufficient training, supplies, facilities and resources and will give providers much-needed flexibility by reducing administrative and regulatory burdens in order to facilitate Kansas's response to the COVID-19 outbreak and state of emergency. We appreciate your consideration of this request. If you have any questions, please do not hesitate to contact us.

Thank you again for all that you do, every day, for Kansas seniors and their families.

Respectfully,



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