

HOUSE BILL NO. ____

AN ACT concerning adult care homes; relating to continuing care retirement communities; transferring authority for certification of such facilities from the Kansas insurance department to the Kansas department for aging and disability services; lowering the nursing facility provider assessment for such facilities; amending K.S.A. 39-923, 40-2231, 40-2232, 40-2233, 40-2234, 40-2235 and 40-2238 and K.S.A. 2023 Supp. 39-936 and 75-7435 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 39-923 is hereby amended to read as follows: 39-923. (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 healthcare facility, home plus, boarding care home, [continuing care retirement community](#) and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary for aging and disability services.

(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 healthcare 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~~ where the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available ~~on a 24-hour~~ 24 hours a day, ~~seven days a week basis~~ seven days a week for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential healthcare facility is not prohibited by this act. Generally, the skilled services

provided in a residential healthcare 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 for children and families, 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 Kansas department for aging and disability services. 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) "Continuing care retirement community" means any place or facility that combines a range of housing and services to encompass the continuum of aging care needs provided at an

independent living facility, an assisted living facility, a residential healthcare facility and a skilled nursing care facility within a single place or facility to avoid the need for residents to relocate to a separate place or facility. The provision of community care includes the multiple levels of care provided within a continuing care retirement community.

(10) "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)~~(11) "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)~~(12) "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 that require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

~~(12)~~(13) "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)~~(14) "Resident" means all individuals kept, cared for, treated, boarded or otherwise

accommodated in any adult care home.

~~(14)~~(15) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

~~(15)~~(16) "Operate an adult care home" means to own, lease, sublease, 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 that hold title to an adult care home purchased or constructed through the sale of bonds.

~~(16)~~(17) "Licensing agency" means the secretary for aging and disability services.

~~(17)~~(18) "Skilled nursing home" means a nursing facility.

~~(18)~~(19) "Intermediate nursing care home" means a nursing facility.

~~(19)~~(20) "Apartment" means a private unit that includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

~~(20)~~(21) "Individual living unit" means a private unit that includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.

~~(21)~~(22) "Operator" means an individual registered pursuant to the operator registration act, K.S.A. 39-973 et seq., and amendments thereto, who may be appointed by a licensee to have the authority and responsibility to oversee an assisted living facility or residential healthcare facility with fewer than 61 residents, a home plus or adult day care facility.

~~(22)~~(23) "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)~~(24) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.

~~(24)~~(25) "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)~~(26) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

~~(26)~~(27) ~~The term~~ "Intermediate personal care home" for purposes of those individuals applying for or receiving veterans' benefits means residential healthcare facility.

~~(27)~~(28) "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 42 C.F.R. § 483.35(h), and who provides such assistance under the supervision of a registered professional or licensed practical nurse.

~~(28)~~(29) "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.

~~(29)~~(30) "Licensee" means any person or persons acting jointly or severally who are licensed by the secretary for aging and disability services pursuant to the adult care home licensure act, K.S.A. 39-923 et seq., and amendments thereto.

~~(30)~~(31) "Insolvent" means that the adult care home, or any individual or entity that operates an adult care home or appears on the adult care home license, has stopped paying debts in the ordinary course of business or is unable to pay debts as they come due in the ordinary course of business.

(b) The term "adult care home" does not include institutions operated by federal or state

governments, except institutions operated by the director of the Kansas commission on veterans affairs office, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices that are certified to participate in the medicare program under 42 C.F.R. § 418.1 et seq., and that provide services only to hospice patients, or centers approved by the centers for medicare and medicaid services as a program for all-inclusive care for the elderly (PACE) under 42 C.F.R. § 460 et seq., that provides services only to PACE participants.

(c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential healthcare 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 healthcare shall have the option of licensing for residential healthcare 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 that 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.

Sec. 2. K.S.A. 2023 Supp. 39-936 is hereby amended to read as follows: 39-936. (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 shall be in attendance at all times when residents receive 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 attendant upon the residents.

(c) (1) The licensing agency shall require unlicensed employees working in an adult care home, except an adult care home licensed for the provision of services to people with intellectual disability that has been granted an exception by the secretary for aging and disability services upon a finding by the licensing agency that an approved training program for certified nurse aides 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 have not completed a course of education and training relating to resident care and treatment approved by the secretary for aging

and disability services or are not participating in such a course to complete successfully 40 hours of training in basic resident care skills. Any unlicensed employee who has not completed at least 40 hours of the certified nurse aide training approved by the secretary for aging and disability services or who is not making progress to complete the course of education and training required by the secretary for aging and disability services under paragraph (2) within four months following completion of such 40 hours shall not provide direct, individual care to residents.

(A) The 40 hours of training and remaining hours in the certified nurse aide training shall be performed under the general supervision of a course supervisor. The course supervisor shall be defined in rules and regulations and approved by the secretary for aging and disability services. As used in this subparagraph, "supervision" means the same as defined in K.S.A. 65-1165, and amendments thereto. The 40 hours of training may be prepared and administered by an adult care home, hospital, as defined in K.S.A. 65-425, and amendments thereto, hospice or program for all-inclusive care for the elderly or by any other qualified course sponsor and may be conducted on the premises of the adult care home, hospital, hospice or program for all-inclusive care for the elderly. The 40 hours of training required in this section shall be a part of an approved certified nurse aide training course required by the secretary for aging and disability services under subsection (c)(2).

(B) Each instructor under the supervision of a course supervisor of the certified nurse aide training course shall be licensed to practice in Kansas and in good standing. As used in this subparagraph, "in good standing" includes the possession of a license, certificate or registration that is subject to probation or non-disciplinary conditions, limitations or restrictions, but does not include a license, certificate or registration that is revoked, canceled or surrendered or subject to pending license-related disciplinary action. If the records of the Kansas department for aging and

disability services reflect that an individual has a prohibiting offense, such license, certificate or registration shall not be considered "in good standing." Any license, certificate or registration that is subject to disciplinary conditions, limitations or restrictions shall remain subject to such conditions, limitations or restrictions.

(C) Training for paid nutrition assistants shall consist of at least eight hours of instruction, at a minimum, that meets the requirements of 42 C.F.R. § 483.160.

(2) The licensing agency may require unlicensed employees working in an adult care home, except an adult care home licensed for the provision of services to people with intellectual disability that has been granted an exception by the secretary for aging and disability services upon a finding by the licensing agency that an appropriate training program for certified nurse aides 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 assistant ~~under as defined in~~ [K.S.A. 39-923\(a\)\(27\)](#), 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) A course of instruction may be prepared and administered by any adult care home, hospital, as defined in K.S.A. 65-425, and amendments thereto, hospice or program for all-inclusive care for the elderly or by any other qualified person. A course of instruction prepared and administered by an adult care home, hospital, hospice or program for all-inclusive care for the elderly may be conducted on the premises of the adult care home, hospital, hospice or program for all-inclusive care for the elderly that prepared and that will administer the course of instruction.

(B) As evidence of successful completion of the training course, such unlicensed employees shall demonstrate competency in a list of skills that are identified and prescribed by the secretary for aging and disability services. The skills demonstration shall be evaluated by a registered professional nurse licensed, including multistate licensure privilege, and in good standing in this state. Such registered professional nurse shall have at least one year of licensed nurse experience providing care for the elderly or chronically ill in a healthcare setting approved by the secretary for aging and disability services. As used in this subparagraph, "in good standing" includes the possession of a license, certificate or registration that is subject to probation or non-disciplinary conditions, limitations or restrictions, but does not include a license, certificate or registration that is revoked, canceled or surrendered or subject to pending license-related disciplinary action. If the records of the Kansas department for aging and disability services reflect that an individual has a prohibiting offense, such license, certificate or registration shall not be considered "in good standing." Any license, certificate or registration that is subject to disciplinary conditions, limitations or restrictions shall remain subject to such conditions, limitations or restrictions.

(3) The licensing agency shall not require unlicensed employees working in 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 for aging and disability services shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction.

(4) Unlicensed employees working in 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:

(A) Prescribed by the secretary for aging and disability services;

(B) reasonably related to the duties performed by unlicensed employees working in adult care homes who provide direct, individual care to residents and who do not administer medications to residents; and

(C) the same examination given by the secretary for aging and disability services to all unlicensed employees working in adult care homes who provide direct, individual care to residents and who do not administer medications.

(5) The secretary for aging and disability services shall fix, charge and collect a fee to cover all or any part of the costs of the licensing agency under this subsection. The fee shall be fixed by rules and regulations of the secretary for aging and disability services. 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 credit of the health occupations credentialing fee fund created by K.S.A. 39-979, and amendments thereto.

(6) The secretary for aging and disability services shall establish a state registry containing information about certified nurse aides working in 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.

(7) No adult care home shall use an individual working as a certified nurse aide in an 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.

(8) (A) The adult care home shall require any certified nurse aide working in an adult care home to complete an approved refresher course if such employee:

- (i) Provides direct, individual care to residents;
- (ii) does not administer medications; and
- (iii) since passing the examination required under paragraph (2), has had a continuous period of 24 consecutive months when the certified nurse aide has not provided direct, individual care to residents.

(B) The secretary for aging and disability services 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 a certified nurse aide working in an adult care home in another state may be so employed in this state without an examination if the secretary for aging and disability services 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 person licensed by the state board of healing arts to practice medicine and surgery 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 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.

Sec. 3. K.S.A. 40-2231 is hereby amended to read as follows: 40-2231. As used in this act:

(a) "Continuing care means the multiple levels of care provided within a continuing care retirement community, as defined in K.S.A. 39-923, and amendments thereto."

(b) "Continuing care contract" means an agreement pursuant to which a provider undertakes to furnish to a person, not related by consanguinity or affinity to the provider, shelter and medical or nursing services or other health-related benefits~~which that~~ require a present or deferred transfer of assets or an entrance fee~~in the amount of \$5,000 or equivalent value or such greater amount as set by the commissioner in rules and regulations~~ in addition to or in lieu of periodic charges.~~Continuing care contract shall also mean an agreement of any other provider who voluntarily applies for a certificate pursuant to K.S.A. 40-2235.~~

(b) "Entrance fee" means the total of any initial or deferred transfer to, or for the benefit of, a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a person as a resident pursuant to a continuing care contract.

(c) "Home" means the facility or facilities occupied, or planned to be occupied, by five or more residents where the provider undertakes pursuant to the continuing care contract to

provide continuing care to such residents.

(d) "Provider" or "continuing care provider" means the person, corporation, partnership, association or other legal entity ~~which~~ that agrees to provide continuing care to residents in a home.

(e) "Resident" means an individual or individuals who have entered into an agreement with a provider for continuing care in a home.

(f) "~~Commissioner~~Secretary" means ~~commissioner of insurance of the state of Kansas~~ the secretary for aging and disability services.

(g) "This act" means the provisions of K.S.A. 40-2231 through 40-2238 and amendments thereto.

Sec. 4. K.S.A. 40-2232 is hereby amended to read as follows: 40-2232. A provider shall be required to complete an annual disclosure statement prescribed by the ~~commissioner~~ secretary and shall be required to deliver the disclosure statement to individuals who are prospective residents, or current residents who request such disclosure statement. The text of the disclosure statement shall contain the following information:

(a) The name and business address of the provider and a statement of whether the provider is an individual, partnership, corporation or any other legal entity.

(b) The names of the individual or individuals who constitute the provider or, if the provider is a partnership, corporation or other legal entity, whether for profit or not for profit, the names of the officers, directors, trustees or managing or general partners of the provider. If the provider is a corporation, the name of any individual who owns 10% or more of the stock of such corporation shall also be disclosed.

(c) With respect to a provider which is either not incorporated or not established and

operated on a not-for-profit basis, the names and business addresses of any individual having any ownership or any beneficial interest in the provider and a description of such individual's interest in or occupation with the provider.

(d) A statement as to whether or not the provider is, or is affiliated with, a religious, charitable or other nonprofit organization and the extent of the affiliation, if any; the extent to which any affiliate organization will be responsible for the financial and contractual obligations of the provider; the provision of the United States internal revenue code, if any, under which the provider or any of the provider's affiliates is or are exempt from the payment of federal income taxes; and, a statement of whether the home is exempt from local property taxation.

(e) A statement that the provider is required to have an annual certified audit by a certified public accountant and that a copy of such audit shall be made available upon request.

(f) If the operation of the home has not yet commenced, and with receipt of contract considerations as defined in K.S.A. 40-2231-~~(a) and (b)~~ and (c), and amendments thereto, the provider shall provide a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including but not limited to:

(1) An estimate of such costs as financing expense, legal expense, land costs, marketing costs and other similar costs which the provider expects to incur or become obligated for prior to the commencement of operations;

(2) A description of any mortgage loan or any other financing intended to be used for the financing of the facility, including the anticipated terms and costs of such financing;

(3) An estimate of the total entrance fee to be received from or on behalf of residents at or prior to commencement of operation; and

(4) An estimate of the funds, if any, which are anticipated to be necessary to fund start-

up losses and provide reserve funds to assure full performance of the obligations of the provider under continuing care contracts.

(g) A statement as to whether the manager or any official or director of the provider, has been convicted of a crime or been a party of any civil action claiming fraud, embezzlement, fraudulent conversion or misappropriation of property which resulted in a judgment against such person and whether any such person has had any state or federal license or permits related to care and housing suspended or revoked.

(h) A statement of the years of experience of the provider and manager in the operation of homes providing continuing care.

(i) A statement of the fiscal year of the provider.

Sec. 5. K.S.A. 40-2233 is hereby amended to read as follows: 40-2233. On or before April 1st of each year, a provider shall file with the ~~commissioner~~ secretary ~~within four months of completion of such provider's fiscal year~~ the annual disclosure statement referred to in K.S.A. 40-2232, and amendments thereto, the continuing care contract referred to in K.S.A. 40-2234, and amendments thereto, and an annual audit certified by a certified public accountant.

Sec. 6. K.S.A. 40-2234 is hereby amended to read as follows: 40-2234. The provider shall provide the ~~commissioner~~ secretary a copy of any continuing care contract form entered into on or after the effective date of this act or entered into between the provider and any resident ~~which that~~ shall include or have attached thereto:

(a) A description of all fees and or charges required of residents, a description of all services to be provided or committed to providing in the future in compliance with the definitions and a description of any services for which an extra charge is made over and above entrance fees and periodic charges that are provided for in the contract;

(b) A listing of the terms and conditions under which the agreement may be cancelled by either party to the agreement or by which any or all of the entrance fee or transfer of assets would be refunded, less the value of any services received; and

(c) A statement describing health and financial conditions required to continue as a resident, including any changes in either health or financial conditions of the resident.

Sec. 7. K.S.A. 40-2235 is hereby amended to read as follows: 40-2235. No provider shall act as or hold themselves out to be a continuing care provider, as defined in this act, in this state, unless the provider shall hold a certificate of registration as a continuing care provider issued by the ~~commissioner of insurance~~ secretary. Application for such certificate shall be made to the ~~commissioner~~ secretary on a form prescribed by such ~~commissioner~~ secretary and shall be accompanied by a filing fee of \$50. Such certificate may be continued for successive annual periods by notifying the ~~commissioner of insurance~~ secretary of such intent and payment of a \$25 continuation fee. Such certificate shall be issued or renewed to a continuing care provider ~~or continued~~ by the ~~commissioner~~ secretary ~~if unless~~ the ~~commissioner~~ secretary ~~after due notice and hearing shall have determined~~ determines that the continuing care provider is ~~not~~ in compliance with this act on or before April 1 of the current calendar year.

Sec. 8. K.S.A. 40-2238 is hereby amended to read as follows: 40-2238. The ~~commissioner~~ secretary shall ~~promulgate~~ adopt any rules and regulations necessary to carry out the provisions of this act.

Sec. 9. K.S.A. 2023 Supp. 75-7435 is hereby amended to read as follows: 75-7435. (a) As used in this section unless the context requires otherwise:

(1) Words and phrases mean the same as defined by K.S.A. 39-923, and amendments thereto.

(2) "Skilled nursing care facility" means a licensed nursing facility, nursing facility for mental health as defined in K.S.A. 39-923, and amendments thereto, or a hospital long-term care unit licensed by the department of health and environment, providing skilled nursing care, but shall not include the Kansas soldiers' home or the Kansas veterans' home.

(3) "Licensed bed" means those beds within a skilled nursing care facility that the facility is licensed to operate.

(4) "Agent" means the Kansas department for aging and disability services.

(5) "Continuing care retirement ~~facility~~ community" means a place or facility holding a certificate of registration issued by the ~~commissioner of insurance~~ agent pursuant to K.S.A. 40-2235, and amendments thereto.

(b) (1) Except as otherwise provided in this section, there is hereby imposed and the ~~secretary of health and environment~~ agent shall assess an annual assessment per licensed bed, hereinafter called a ~~quality care~~ nursing facility provider assessment, on each skilled nursing care facility. The assessment rate on all facilities ~~in the aggregate that provide skilled nursing care~~ shall be ~~an amount fixed by rules and regulations of the secretary of health and environment, shall not exceed \$4,908~~ at \$4,000 annually per licensed bed. Such amount shall be imposed ~~as an amount per licensed bed and shall be imposed~~ uniformly on all skilled nursing care facilities. ~~except that~~ The assessment rate shall be reduced to \$2,000 for skilled nursing care facilities that are part of a continuing care retirement ~~facility~~ community, small skilled nursing care facilities and high medicaid volume skilled nursing care facilities. ~~shall not exceed $\frac{1}{6}$ of the actual amount assessed all other skilled nursing care facilities. No~~ Rules and regulations ~~of~~ adopted by the agent ~~secretary of health and environment~~ shall not grant any exception to or exemption from the ~~quality care~~ nursing facility provider assessment. The assessment shall be paid quarterly, with

one fourth of the annual amount due by the 30th day after the end of the month of each calendar quarter. The ~~secretary of health and environment is authorized to~~ agent may establish delayed payment schedules for skilled nursing care facilities that are unable to make quarterly payments when due under this section due to financial difficulties, as determined by the ~~secretary of health and environment~~ agent. As used in this paragraph, the terms "small skilled nursing care facilities" and "high medicaid volume skilled nursing care facilities" shall be defined by the agent ~~secretary of health and environment~~ by rules and regulations, except that the definition of "small skilled nursing care facility" shall not be fewer than 40 beds.

(2) Beds licensed after July 1 each year shall pay a prorated amount of the applicable annual assessment so that the assessment applies only for the days such new beds are licensed. The proration shall be calculated by multiplying the applicable assessment by the percentage of days the beds are licensed during the year. Any change that reduces the number of licensed beds in a facility shall not result in a refund being issued to the skilled nursing care facility.

(3) If an entity conducts, operates or maintains more than one licensed skilled nursing care facility, the entity shall pay the nursing facility assessment for each facility separately. No skilled nursing care facility shall create a separate line-item charge for the purpose of passing through the ~~quality care~~ nursing facility provider assessment to residents. No skilled nursing care facility shall be guaranteed, expressly or otherwise, that any additional moneys paid to the facility under this section will equal or exceed the amount of its ~~quality care~~ nursing facility provider assessment.

(4) The payment of the ~~quality care~~ nursing facility provider assessment to the secretary of health and environment shall be an allowable cost for medicaid reimbursement purposes. A rate adjustment pursuant to subsection (d)(5) shall be made effective on the date of imposition of

the assessment, to reimburse the portion of this cost imposed on medicaid days.

(5) The secretary of health and environment shall seek a waiver from the United States department of health and human services to allow the state to impose varying levels of assessments on skilled nursing care facilities based on specified criteria. It is the intent of the legislature that the waiver sought by the secretary of health and environment be structured to minimize the negative fiscal impact on certain classes of skilled nursing care facilities.

(c) Each skilled nursing care facility shall prepare and submit to the ~~secretary of health and environment~~ agent any additional information required and requested by the ~~secretary of health and environment~~ agent to implement or administer the provisions of this section. Each skilled nursing care facility shall prepare and submit quarterly to the secretary for aging and disability services the rate the facility charges to private pay residents, and the secretary shall cause this information to be posted on the web site of the department for aging and disability services.

(d) (1) There is hereby created in the state treasury the ~~quality care nursing facility~~ provider fund to be administered by the secretary ~~of health and environment~~ for aging and disability services. All moneys received for the assessments imposed pursuant to subsection (b), including any penalty assessments imposed thereon pursuant to subsection (e), shall be remitted to the state treasurer in accordance with 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 credit of the ~~quality care nursing facility~~ provider fund. All expenditures from the ~~quality care nursing facility~~ provider 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 health and environment~~ for health and environment or the secretary's agent.

(2) All moneys in the ~~quality-care~~ nursing facility provider fund shall be used to finance initiatives to maintain or improve the quantity and quality of skilled nursing care in skilled nursing care facilities in Kansas. No moneys credited to the ~~quality-care~~ nursing facility provider fund shall be transferred to or otherwise revert to the state general fund at any time. Notwithstanding the provisions of any other law to the contrary, if any moneys credited to the ~~quality-care~~ nursing facility provider fund are transferred or otherwise revert to the state general fund, 30 days following the transfer or reversion the ~~quality-care~~ nursing facility provider assessment shall terminate and the secretary of health and environment shall discontinue the imposition, assessment and collection of the assessment. Upon termination of the assessment, all collected assessment revenues, including the moneys inappropriately transferred or reverting to the state general fund, less any amounts expended by the secretary ~~of health and environment~~ for aging and disability services, shall be returned on a pro rata basis to skilled nursing care facilities that paid the assessment.

(3) Any moneys received by the state of Kansas from the federal government as a result of federal financial participation in the state medicaid program that are derived from the ~~quality care-~~ nursing facility provider assessment shall be deposited in the ~~quality-care~~ nursing facility provider fund and used to finance actions to maintain or increase healthcare in skilled nursing care facilities.

(4) Moneys in the fund shall be used exclusively for the following purposes:

(A) To pay administrative expenses incurred by the secretary of health and environment or the agent in performing the activities authorized by this section, except that such expenses shall not exceed a total of 1% of the aggregate assessment funds collected pursuant to subsection

(b) for the prior fiscal year;

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(B) to increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper payment limits, as may be negotiated;

(C) to reimburse the medicaid share of the ~~quality-care~~ nursing facility provider assessment as a pass-through medicaid allowable cost;

(D) to restore the medicaid rate reductions implemented January 1, 2010;

(E) to restore funding for fiscal year 2010, including rebasing and inflation to be applied to rates in fiscal year 2011; and

(F) the remaining amount, if any, shall be expended first to increase the direct health care costs center limitation up to 150% of the case mix adjusted median, and then, if there are remaining amounts, for other ~~quality-care~~ nursing facility provider enhancement of skilled nursing care facilities as approved by the ~~quality-care~~ nursing facility provider improvement panel but shall not be used directly or indirectly to replace existing state expenditures for payments to skilled nursing care facilities for providing services pursuant to the state medicaid program.

(5) Any moneys received by a skilled nursing care facility from the ~~quality-care~~ nursing facility provider fund shall not be expended by any skilled nursing care facility to provide for bonuses or profit-sharing for any officer, employee or parent corporation but may be used to pay to employees who are providing direct care to a resident of such facility.

(6) Adjustment payments may be paid quarterly or within the daily medicaid rate to reimburse covered medicaid expenditures in the aggregate within the upper payment limits.

(7) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the ~~quality-care~~ nursing facility provider fund interest earnings based on:

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(A) The average daily balance of moneys in the ~~quality-care~~ nursing facility provider fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) If a skilled nursing care facility fails to pay the full amount of the ~~quality-care~~ nursing facility provider assessment imposed pursuant to subsection (b), when due and payable, including any extensions of time granted under that subsection, the secretary of health and environment shall assess a penalty in the amount of the lesser of \$500 per day or 2% of the ~~quality-care~~ nursing facility provider assessment owed for each day the assessment is delinquent. The secretary of health and environment is authorized to establish delayed payment schedules for skilled nursing care facilities that are unable to make installment payments when due under this section because of financial difficulties, as determined by the secretary of health and environment.

(f) (1) The secretary of health and environment shall assess and collect ~~quality-care~~ nursing facility provider assessments imposed pursuant to subsection (b), including any penalty assessments imposed thereon pursuant to subsection (e), from skilled nursing care facilities on and after July 1, 2010, except that no assessments or penalties shall be assessed under subsections (a) through (h) until:

(A) An amendment to the state plan for medicaid that increases the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program and that is proposed for approval for purposes of subsections (a) through (h) is approved by the federal government, in which case the initial assessment is due not earlier than 60 days after state plan approval; and

(B) the skilled nursing care facilities have been compensated retroactively within 60 days after state plan approval at the increased rate for services provided pursuant to the federal medicaid program for the period commencing on and after July 1, 2010.

(2) The secretary of health and environment shall implement and administer the provisions of subsections (a) through (h) in a manner consistent with applicable federal medicaid laws and regulations. The secretary of health and environment shall seek any necessary approvals by the federal government that are required for the implementation of subsections (a) through (h).

(3) The provisions of subsections (a) through (h) shall be null and void and shall have no force and effect if one of the following occur:

(A) The medicaid plan amendment that increases the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program and that is proposed for approval for purposes of subsections (a) through (h) is not approved by the United States centers for medicare and medicaid services;

(B) the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program are reduced below the rates calculated on December 31, 2009, increased by revenues in the ~~quality-care~~ nursing facility provider fund and matched by federal financial participation and rebasing as provided for in K.S.A. 75-5958, and amendments thereto;

(C) any funds are utilized to supplant funding for skilled nursing care facilities as required by subsection (g);

(D) any funds are diverted from those purposes set forth in subsection (d)(4); or

(E) upon the governor signing, or allowing to become law without signature, legislation

that, by proviso or otherwise, directs any funds from those purposes set forth in subsection (d)(4) or that would propose to suspend the operation of this section.

(g) On and after July 1, 2010, reimbursement rates for skilled nursing care facilities shall be restored to those in effect during December 2009. No funds generated by the assessments or federal funds generated therefrom shall be utilized for such restoration, but such funds may be used to restore the rate reduction in effect from January 1, 2010, to June 30, 2010.

(h) Rates of reimbursement shall not be limited by private pay charges.

(i) If the provisions of subsections (a) through (h) are repealed, expire or become null and void and have no further force and effect, all moneys in the ~~quality-care~~ nursing facility provider fund that were paid under the provisions of subsections (a) through (h) shall be returned to the skilled nursing care facilities that paid such moneys on the basis on which such payments were assessed and paid pursuant to subsections (a) through (h).

(j) The department of health and environment may adopt rules and regulations necessary to implement the provisions of this section.

(k) For purposes of administering and selecting the reimbursements of moneys in the ~~quality-care~~ nursing facility provider assessment fund, the ~~quality-care~~ nursing facility provider improvement panel is hereby established. The panel shall consist of the following members: Two persons appointed by leadingage Kansas; two persons appointed by the Kansas health care association; one person appointed by Kansas advocates for better care; one person appointed by the Kansas hospital association; one person appointed by the governor who is a member of the Kansas adult care executives association; one person appointed by the governor who is a skilled nursing care facility resident or the family member of such a resident; one person appointed by the Kansas foundation for medical care; one person appointed by the governor from the

department for aging and disability services; one person appointed by the governor from the department of health and environment; one person appointed by the president of the senate who is affiliated with an organization representing and advocating the interests of retired persons in Kansas; and one person appointed by the speaker of the house of representatives who is a volunteer with the office of the state long-term care ombudsman established by the long-term care ombudsman act. The person appointed by the governor from the department for aging and disability services and the person appointed by the governor from the department of health and environment shall be nonvoting members of the panel. The panel shall meet as soon as possible subsequent to the effective date of this act and shall elect a chairperson from among the members appointed by the trade organizations specified in this subsection. The members of the ~~quality care~~ nursing facility provider improvement panel shall serve without compensation or expenses. The ~~quality care~~ nursing facility provider improvement panel shall report annually on or before January 10 to the senate committees on public health and welfare and ways and means, the house committees on appropriations and health and human services and the Robert G. (Bob) Bethell joint committee on home and community based services and KanCare oversight concerning the progress to reduce the incidence of antipsychotic drug use in elders with dementia, participation in the nursing facility quality and efficiency outcome incentive factor, participation in the culture change and person-centered care incentive program, annual resident satisfaction ratings for Kansas skilled nursing care facilities and the activities of the panel during the preceding calendar year and any recommendations that the panel may have concerning the administration of and expenditures from the ~~quality care~~ nursing facility provider assessment fund.

(1) The provisions of this section shall expire on July 1, 2030.

Sec. 10. K.S.A. 39-923, 40-2231, 40-2232, 40-2233, 40-2234, 40-2235 and 40-2238

and K.S.A. 2023 Supp. 39-936 and 75-7435 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.