

HOUSE BILL No. 2246

By Committee on Judiciary

1-31

1 AN ACT concerning the adult care home licensure act; relating to
2 involuntary transfer or discharge of residents from an adult residential
3 care facility; creating a right to appeal an involuntary transfer or
4 discharge; requiring the secretary for aging and disability services to
5 review notices and preside over appeals.
6

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

8 Section 1. (a) The administrator or operator of each adult residential
9 care facility shall ensure that a resident is not involuntarily transferred or
10 discharged from the adult residential care facility unless one or more of the
11 following conditions are met:

12 (1) The transfer or discharge is necessary for the resident's welfare
13 and the resident's needs cannot be met by the current adult residential care
14 facility;

15 (2) the health or safety of other individuals in the adult residential
16 care facility is endangered;

17 (3) the resident has failed, after reasonable and appropriate notice, to
18 pay the rates and charges imposed by the adult residential care facility; or

19 (4) the adult residential care facility ceases to operate.

20 (b) Before a resident may be transferred or discharged involuntarily,
21 the administrator or operator, or designee, shall:

22 (1) Notify the resident, and, if known, a representative or designated
23 family member, of the transfer or discharge and the reason for the transfer
24 or discharge;

25 (2) if the reason for transfer or discharge is specified in subsection (a)
26 (1) through (a)(3), record and substantiate in the resident's clinical record
27 as follows:

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

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

1 (C) a physician shall document the rationale for transfer or discharge
2 in the resident's clinical record if the transfer or discharge is necessary
3 because the health or safety of other individuals in the adult residential
4 care facility is endangered; and

5 (3) provide a written transfer or discharge notice that shall include the
6 following:

7 (A) The reason for the transfer or discharge;

8 (B) the effective date of the transfer or discharge;

9 (C) the contact information for the state long-term care ombudsman;

10 (D) the resident's right to appeal an involuntary transfer or discharge
11 established under this section and information as designated by the
12 secretary to assist the resident in exercising such right;

13 (E) for a resident with an intellectual or developmental disability,
14 dementia or another cognitive-limiting condition, the contact information
15 for the agency responsible for the protection and advocacy of individuals
16 with such conditions; and

17 (F) for a resident with a mental disorder or related disability, the
18 contact information for the agency responsible for protection and advocacy
19 of individuals with a mental disorder or related disability.

20 (c) The administrator or operator, or designee, shall provide the
21 notice of transfer or discharge required by subsection (b) to the resident, or
22 the resident's representative, at least 30 days in advance of the resident's
23 transfer or discharge, unless:

24 (1) The safety of other individuals in the adult residential care facility
25 would be endangered; or

26 (2) the resident's urgent medical needs require an immediate transfer
27 to another healthcare facility.

28 (d) The administrator or operator, or designee, shall provide sufficient
29 preparation and orientation to each resident before a resident's discharge,
30 including development of a discharge plan, with involvement of the
31 resident, the resident's representative and designated family and subject to
32 approval of the resident's physician, if practicable.

33 (e) (1) If a resident of an adult residential care facility receives notice
34 of a pending involuntary transfer or discharge in violation of this section,
35 such resident, or such resident's representative, may appeal the adult
36 residential care facility's determination to involuntarily transfer or
37 discharge the resident to the secretary for aging and disability services by
38 filing a notice of appeal in the office of administrative hearings within 15
39 days after the date of such notice. A presiding officer from the office of
40 administrative hearings shall hold a hearing, in accordance with the
41 provisions of the Kansas administrative procedure act, within 30 days after
42 the receipt of the notice of appeal.

43 (2) If a resident files an appeal pursuant to this section, the resident

1 shall remain or be permitted to return and resume residence in the adult
2 residential care facility while the appeal is pending.

3 (f) As used in sections 1 through 10, and amendments thereto, "adult
4 residential care facility" means an assisted living facility, a residential
5 healthcare facility, home plus or a boarding care home as such terms are
6 defined in K.S.A. 39-923, and amendments thereto.

7 Sec. 2. (a) The secretary for aging and disability services shall make
8 available to all adult residential care facilities a 30-day involuntary transfer
9 or discharge notice form that shall include, but not be limited to, the
10 information in subsection (c).

11 (b) The administrator or operator of an adult residential care facility,
12 or designee, shall not be required to use the 30-day involuntary transfer or
13 discharge notice form prescribed by the secretary, but any form used by
14 the facility shall include, but not be limited to, the information in
15 subsection (c).

16 (c) A 30-day involuntary transfer or discharge notice shall be written
17 and include, but not be limited to:

18 (1) The reason for the transfer or discharge;

19 (2) facts and evidence supporting each reason for the transfer or
20 discharge, actions taken to avoid the transfer or discharge and the timing
21 of those actions;

22 (3) the name and contact information of the facility issuing the notice;

23 (4) the name and contact information of the person employed by the
24 facility with whom the resident or resident's representative may discuss the
25 notice;

26 (5) the issue date of the notice;

27 (6) the effective date of the transfer or discharge;

28 (7) the location where the resident will be transferred or discharged, if
29 known;

30 (8) a statement that the resident or resident's representative has the
31 right to appeal the involuntary transfer or discharge within 15 days after
32 the issue date contained in the notice;

33 (9) the procedure for the resident or resident's representative to file
34 the notice of appeal;

35 (10) a copy of the 30-day involuntary transfer or discharge notice of
36 appeal form;

37 (11) a list of the names and contact information of each recipient of
38 the notice and how the notice is being given to each recipient;

39 (12) the contact information for the state long-term care ombudsman;

40 (13) a section where the recipient of the notice signs the form to
41 acknowledge receipt of the form if receiving the form in person;

42 (14) for a resident with an intellectual or developmental disability,
43 dementia or another cognitive-limiting condition, the contact information

1 for the agency responsible for the protection and advocacy of individuals
2 with such conditions; and

3 (15) for a resident with a mental disorder or related disability, the
4 contact information for the agency responsible for protection and advocacy
5 of individuals with a mental disorder or related disability.

6 (d) The form required by subsection (c) shall include a 30-day
7 involuntary transfer or discharge notice of appeal form that shall include,
8 but not be limited to, the information in subsection (e). Such form shall be
9 provided to all adult residential care facilities.

10 (e) The administrator or operator of an adult residential care facility
11 shall not be required to use the 30-day involuntary transfer or discharge
12 notice of appeal form prescribed by the secretary, but any form used by the
13 facility shall include, but not be limited to:

14 (1) The name and contact information of the resident;

15 (2) the name and contact information of the person appealing the 30-
16 day involuntary transfer or discharge notice and the person's relationship
17 to the resident;

18 (3) the name of the facility issuing the 30-day involuntary transfer or
19 discharge notice;

20 (4) the date the 30-day involuntary transfer or discharge notice was
21 issued;

22 (5) the date of the transfer or discharge listed on the 30-day
23 involuntary transfer or discharge notice; and

24 (6) whether the person appealing the 30-day involuntary transfer or
25 discharge notice requests the secretary to facilitate an informal conference
26 before the administrative hearing.

27 Sec. 3. Before issuing a 30-day involuntary transfer or discharge
28 notice in accordance with section 1, and amendments thereto, the
29 administrator or operator of an adult residential care facility, or designee,
30 shall:

31 (a) Notify the resident and the resident's representative in writing of
32 the transfer or discharge and the reason;

33 (b) hold a meeting with the resident and the resident's representative
34 regarding the reason for the involuntary transfer or discharge and attempt
35 to resolve the reason for the involuntary transfer or discharge;

36 (c) notify the resident and the resident's representative in writing that
37 the resident or the resident's representative may invite family members,
38 relevant health professionals, the state long-term care ombudsman, or
39 other persons of the resident's or the resident's representative's choosing to
40 participate in such meeting with the resident and the resident's
41 representative; and

42 (d) record the reason for the transfer or discharge under any of the
43 circumstances specified in section 1(a)(1) through (3), and amendments

1 thereto, in the resident's clinical record and shall be substantiated as
2 follows:

3 (1) The resident's physician shall document the reason for transfer or
4 discharge in the resident's clinical record if the transfer or discharge is
5 necessary for the resident's welfare and the resident's needs cannot be met
6 by the adult residential care facility; or

7 (2) a physician shall document the reason for transfer or discharge in
8 the resident's clinical record if the transfer or discharge is necessary
9 because the health or safety of other individuals in the adult residential
10 care facility is endangered.

11 Sec. 4. (a) The administrator or operator of an adult residential care
12 facility, or designee, shall deliver the notice to the resident in person and
13 place a copy in the resident's record. On the same day, the administrator or
14 operator, or designee, shall send the notice to:

15 (1) The resident's representative in person, by return receipt delivery,
16 or by email, read receipt requested; and

17 (2) the state long-term care ombudsman in person or by email.

18 (b) The administrator or operator, or designee, shall document
19 acknowledgment of receipt of the 30-day involuntary transfer or discharge
20 notice by all required recipients by obtaining and maintaining:

21 (1) The recipient's signature on the 30-day involuntary transfer or
22 discharge notice form;

23 (2) the return receipt affirming delivery of the notice; or

24 (3) an electronic read receipt from the recipient's email.

25 (c) If the recipient refuses receipt of the notice, the administrator or
26 operator, or designee, shall give the document to the recipient through a
27 different method of delivery. The administrator or operator, or designee,
28 shall document the refusal. After attempting delivery by two different
29 methods, if the recipient refuses delivery through both methods, the notice
30 is deemed to be received by the recipient.

31 Sec. 5. (a) Except when a facility had its license revoked or not
32 renewed by the secretary for aging and disability services or voluntarily
33 surrendered a license, a resident who receives a 30-day involuntary
34 transfer or discharge notice shall be entitled to an administrative hearing if
35 the resident or the resident's representative requests an administrative
36 hearing in a timely manner.

37 (b) A resident who receives a 30-day involuntary transfer or discharge
38 notice, the resident's representative or the state long-term care
39 ombudsman, if requested and on behalf of the resident or the resident's
40 representative, may appeal such transfer or discharge by filing a notice of
41 appeal with the office of administrative hearings within 15 calendar days
42 after the issue date printed on the notice. The secretary may extend the
43 time allowed for requesting an administrative hearing if the secretary

1 determines that good cause exists for the failure to make a timely request.

2 (c) If the resident is incapacitated and does not have a representative,
3 the state long-term care ombudsman may file a notice of appeal on behalf
4 of the resident.

5 (d) If the resident or the resident's representative files the notice of
6 appeal form to the office of administrative hearings, on the same day the
7 resident files the notice of appeal to the office of administrative hearings,
8 the resident shall give a copy of the completed notice of appeal to the
9 administrator or operator, or designee, and the state long-term care
10 ombudsman.

11 (e) If the state long-term care ombudsman completes or files the
12 notice of appeal form at the request of the resident or the resident's
13 representative, at the same time the state long-term care ombudsman files
14 the notice of appeal to the office of administrative hearings, the state long-
15 term care ombudsman shall give a copy of the completed notice of appeal
16 to the resident, and the administrator or operator, or designee, and with
17 resident's consent, to the resident's representative.

18 (f) Within 15 calendar days after the receipt of the notice of appeal,
19 the office of administrative hearings shall hold a hearing in accordance
20 with the provisions of the Kansas administrative procedure act.

21 (g) The office of administrative hearings shall issue a written decision
22 within 10 business days after the completion of the administrative hearing.

23 (h) The resident who has received a 30-day involuntary transfer or
24 discharge notice shall be allowed to continue to reside in the facility until
25 the hearing process is completed. The resident shall be responsible to pay
26 for any services provided by the facility to the resident until the hearing
27 process is completed.

28 Sec. 6. (a) After a notice of appeal has been filed but before the
29 administrative hearing, the following people may request the secretary to
30 facilitate an informal conference to discuss the transfer or discharge:

31 (1) The resident;

32 (2) the resident's representative;

33 (3) the administrator or operator of an adult residential care facility,
34 or designee; or

35 (4) the state long-term care ombudsman, if requested by the resident
36 or resident's representative and when applicable.

37 (b) The secretary shall accept a request for an informal conference
38 that is submitted by any means.

39 (c) If an informal conference is requested, the conference shall be
40 scheduled within five business days of the secretary receiving the request
41 for the informal conference.

42 (d) (1) The informal conference shall include:

43 (A) The secretary, or the secretary's designee;

1 (B) the resident or the resident's representative; and

2 (C) the administrator or operator, or designee.

3 (2) The informal conference may include:

4 (A) Healthcare professionals; and

5 (B) the state long-term care ombudsman.

6 (e) The party filing the appeal shall provide notice to the office of
7 administrative hearings that such party is satisfied with the outcome of the
8 informal conference. Upon receipt of such notice, the office shall cancel
9 the administrative hearing.

10 (f) The scheduling or holding of an informal conference shall not
11 extend the number of days after the receipt of the notice of appeal in which
12 the office of administrative hearings shall hold a hearing.

13 Sec. 7. (a) In the case of an emergency transfer or discharge, the
14 administrator or operator of an adult residential care facility, or designee,
15 shall provide a notice of emergency involuntary transfer or discharge to
16 the resident, or the resident's representative, prior to or within 48 hours
17 following the transfer or discharge. A copy of the notice shall be provided
18 to the secretary and the state long-term care ombudsman.

19 (b) If the resident has already been transferred or discharged on an
20 emergency basis, the administrator or operator, or designee, shall hold a
21 space available for the resident pending receipt of an administrative
22 decision. If the resident appeals the transfer or discharge, the resident shall
23 be responsible to pay for the space held by the administrator or operator, or
24 designee, pursuant to this subsection.

25 (c) The secretary for aging and disability services shall adopt rules
26 and regulations to define an emergency or set criteria that the secretary
27 shall use to determine such emergency has occurred. Prior to adopting
28 rules and regulations pursuant to subsection (c), the secretary shall
29 determine whether an emergency occurred by considering the health,
30 safety and welfare of the resident being discharged or transferred, other
31 residents and facility staff.

32 (d) If the secretary has determined such discharge or transfer is an
33 emergency pursuant to subsection (c) or (d), sections 8 through 10, and
34 amendments thereto, shall apply. If the secretary has determined such
35 discharge or transfer is not an emergency, then sections 1 through 8, and
36 amendments thereto, shall apply.

37 Sec. 8. (a) The secretary for aging and disability services shall make
38 available to all adult residential care facilities an emergency involuntary
39 transfer or discharge notice form that shall include, but not be limited to,
40 the information in subsection (c).

41 (b) The administrator or operator of an adult residential care facility,
42 or designee, shall not be required to use the emergency involuntary
43 transfer or discharge notice form prescribed by the secretary, but any form

1 used by the facility shall include, but not be limited to, the information in
2 subsection (c).

3 (c) An emergency involuntary transfer or discharge notice shall be
4 written and include, but not be limited to:

5 (1) A statement that the resident or resident's representative has the
6 right to appeal the emergency involuntary transfer or discharge within
7 seven calendar days after the receipt of the notice;

8 (2) the procedure for the resident or the resident's representative to
9 file the notice of appeal; and

10 (3) a copy of the adult residential care facility emergency involuntary
11 transfer or discharge notice of appeal form.

12 (d) The form required by subsection (a) shall include an emergency
13 involuntary transfer or discharge notice of appeal form that shall include,
14 but not be limited to, the information in subsection (e). Such form shall be
15 provided to all adult residential care facilities.

16 (e) The emergency involuntary transfer or discharge notice of appeal
17 form shall include, but not be limited to:

18 (1) The name and contact information of the resident;

19 (2) the name and contact information of the person appealing the
20 emergency involuntary transfer or discharge notice and the person's
21 relationship to the resident;

22 (3) the name of the facility issuing the emergency involuntary transfer
23 or discharge notice;

24 (4) the date the emergency involuntary transfer or discharge notice
25 was issued; and

26 (5) the date of transfer or discharge listed on the emergency
27 involuntary transfer or discharge notice.

28 Sec. 9. (a) Before the administrator or operator of an adult residential
29 care facility, or designee, issues an emergency involuntary transfer or
30 discharge notice to the resident, the administrator or operator, or designee,
31 shall first submit the written notice to the secretary for review and receive
32 a written response from the secretary stating whether the notice and other
33 documentation submitted by the administrator or operator, or designee,
34 complies with the requirements contained in this section.

35 (b) The administrator or operator, or designee, shall provide to the
36 secretary a copy of the proposed emergency involuntary transfer or
37 discharge notice that complies with the requirements listed in section 10,
38 and amendments thereto.

39 (c) Within two business days after receiving such copy of the
40 proposed emergency involuntary transfer or discharge notice, the secretary
41 shall provide written notice to the administrator or operator, or designee,
42 with a determination of whether the proposed transfer or discharge notice
43 complies with the requirements contained in section 8, and amendments

1 thereto. If the secretary determines the requirements are not met, the
2 administrator or operator, or designee, shall not issue the emergency
3 transfer or discharge notice.

4 (d) If conditions exist that would immediately endanger the resident,
5 other residents or staff that cannot be mitigated by the facility, then the
6 resident may be removed prior to the review required by this section.

7 (e) Nothing in this section shall prohibit an administrator or operator,
8 or designee, from submitting or resubmitting an emergency or 30-day
9 involuntary transfer or discharge notice.

10 (f) The administrator or operator, or designee, may issue the notice if
11 the secretary determines the provisions of this section are met.

12 Sec. 10. (a) A resident who receives an emergency involuntary
13 transfer or discharge notice shall be entitled to an administrative hearing if
14 the resident or resident's representative requests an administrative hearing
15 in a timely manner.

16 (b) The filing of a notice of appeal or appeal process shall not delay
17 or change the date of the emergency involuntary transfer or discharge.

18 (c) A resident who receives an emergency involuntary transfer or
19 discharge notice, the resident's representative or the state long-term care
20 ombudsman, if requested and on behalf of the resident or the resident's
21 representative, may appeal such transfer or discharge by filing a notice of
22 appeal with the office of administrative hearings within seven calendar
23 days after receiving the written notice. The secretary may accept a notice
24 of appeal after seven calendar days if the secretary determines that good
25 cause exists for failure to make a timely request.

26 (d) If the resident is incapacitated and does not have a representative,
27 the state long-term care ombudsman may file a notice of appeal on behalf
28 of the resident.

29 (e) If the resident or the resident's representative files the notice of
30 appeal form to the office of administrative hearings, on the same day the
31 resident files the notice of appeal to the office of administrative hearings,
32 the resident shall give a copy of the completed notice of appeal to the
33 administrator or operator of an adult residential care facility, or designee,
34 and the state long-term care ombudsman.

35 (f) If the state long-term care ombudsman completes or files a notice
36 of appeal form at the request of the resident or the resident's representative,
37 on the same day the state long-term care ombudsman files the notice of
38 appeal to the office of administrative hearings, the state long-term care
39 ombudsman shall give a copy of the completed notice of appeal to the
40 resident, the administrator or operator, or designee, and with the resident's
41 consent, to the resident's representative.

42 (g) Within 14 calendar days after the receipt of the notice of appeal,
43 the office of administrative hearings shall hold a hearing in accordance

1 with the provisions of the Kansas administrative procedure act.

2 (h) The office of administrative hearings shall issue a written decision
3 within five business days after the completion of the administrative
4 hearing.

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