

Adult Care Homes; Covered Facilities; COVID-19; Immunity from Civil Liability; HB 2126

HB 2126 amends the COVID-19 Response and Reopening for Business Liability Protection Act by replacing the definition of “adult care facility” with the following definition of “covered facility”:

- An adult care home, as defined in the Adult Care Home Licensure Act, except that “covered facility” would include a center approved by the Centers for Medicare and Medicaid Services as a Program for All-inclusive Care for the Elderly (PACE) that provides services only to PACE participants;
- A community mental health center and a crisis intervention center, as defined elsewhere in statute; and
- A community service provider, a community developmental disability organization, and an institution, as defined in the Developmental Disabilities Reform Act.

The bill replaces an affirmative defense available in certain circumstances for an adult care facility in a civil action for damages, administrative fines, or penalties for a COVID-19 claim with immunity from liability for a covered facility in a civil action for damages for a COVID-19 claim if such facility was in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.

For purposes of this immunity provision, “public health directives” means any of the following required by law to be followed related to COVID-19:

- State statutes or rules and regulations; or
- Federal statutes or regulations from federal agencies, including the U.S. Centers for Disease Control and Prevention and the Occupational Safety and Health Administration of the U.S. Department of Labor.

The bill states this immunity provision shall not apply to civil liability when it is established the act, omission, or decision giving rise to the cause of action constituted gross negligence or willful, wanton, or reckless conduct.

The bill states the amendments replacing the affirmative defense with an immunity provision apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to termination of the state of disaster emergency related to the COVID-19 public health emergency.

The bill takes effect upon publication in the *Kansas Register*.