

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2246**

As Recommended by House Committee on
Judiciary

Brief*

Sub. for HB 2246 would add law to the Adult Care Home Licensure Act (Act) concerning involuntary transfer or discharge from an adult residential care facility. The bill would authorize the Secretary for Aging and Disability Services (Secretary) to investigate violations and require the State Long-Term Care Ombudsman to publish an annual report.

Definition

The bill would define “adult residential care facility” (facility) to mean an assisted living facility, a residential health care facility, home plus, or a boarding care home, as defined in the Act.

Involuntary Transfer or Discharge

Conditions for Transfer or Discharge (Section 1)

The bill would require an administrator or operator of a facility to ensure that a resident is not involuntarily transferred or discharged unless one or more of the following conditions are met:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met by the facility;
- The health or safety of other individuals in the facility is endangered;
- The resident has failed, after reasonable and appropriate notice, to pay the rates and charges imposed by the facility; or
- The facility ceases to operate.

Notification and Documentation (Section 1)

The bill would require the administrator or operator, before transferring or discharging a resident, to notify the resident, and, if known, a representative or designated family member, of the transfer or discharge and the reason for the transfer or discharge.

The bill also would require the administrator or operator, or designee, before involuntarily transferring or discharging a resident, to record and substantiate documentation by a physician in the resident's clinical records for transfer or discharge, if the reason for transfer is one of the above-described conditions other than a facility's cessation of operations, and if transfer or discharge is:

- Necessary for the resident's welfare and the resident's needs cannot be met by the facility;
- Appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; or
- Necessary because the health or safety of other individuals in the adult residential care facility is endangered.

The bill also would require the administrator or operator, or designee, before transferring or discharging a resident, to provide a written transfer or discharge notice that the bill would require to include the following:

- The reason for the transfer or discharge;
- The effective date of the transfer or discharge;
- The contact information for the State Long-Term Care Ombudsman;
- An affirmative statement listing what services are necessary for the resident that the existing negotiated services agreement with the facility does not include;
- The contact information of the agency responsible for the protection and advocacy of individuals with such conditions, for a resident with an intellectual or developmental disability, dementia, or other cognitive-limiting condition; and
- The contact information of the agency responsible for protection and advocacy of individuals with a mental disorder or related disability, for a resident with such disorder or disability.

The bill would require the administrator or operator, or such person's designee, to provide the notice of transfer or discharge to the resident, or the resident's legal representative, at least 30 days in advance of the resident's transfer or discharge, unless:

- The safety of other individuals in the facility would be endangered; or
- The resident's urgent medical needs require an immediate transfer to another health care facility.

The bill would require the administrator or operator, or such person's designee, to provide sufficient preparation and orientation to each resident before a resident's discharge, including development of a discharge plan, with involvement of the resident, the resident's legal representative, and designated family, and approval of the resident's physician if practicable.

Under the bill, the administrator, operator, or designee would be required to provide the Secretary and the State Long-Term Care Ombudsman a copy of the notice, which the bill would require to be maintained for three years.

Investigation (Section 1)

If a resident of a facility receives notice of a pending involuntary transfer or discharge in violation of bill's provisions, the bill would require the Secretary to investigate such violation. The Secretary, after providing notice and an opportunity for a hearing in accordance with Kansas Administrative Procedure Act, could assess a civil penalty of up to \$5,000 against any facility that violates the provisions of the bill.

Annual Report (Section 1)

The bill would require the State Long-Term Care Ombudsman to publish an annual report regarding notices issued and violations of these provisions.

Transfer or Discharge Notice Form (Section 2)

The bill would require the Secretary to make available to all facilities a 30-day involuntary transfer or discharge notice form (notice form). The administrator or operator of a facility would not be required to use the transfer or discharge notice form, but the bill would require any form used by a facility to include information required by the Act.

The bill would require the transfer or discharge notice form to be written and include the same information required in a facility notice of such transfer or discharge.

Emergency Involuntary Transfer or Discharge (Section 7)

If an emergency involuntary transfer or discharge (emergency transfer or discharge) occurs, the administrator or operator of the facility, or designee, would be required to provide notice of such emergency transfer or discharge to the resident or their representative prior to or within 48 hours following such transfer or discharge. The bill would also require notice to be provided to the Secretary and the State Long-Term Care Ombudsman and the notice to be maintained for three years.

The bill would require a notice of emergency transfer or discharge to include:

- The same information required for a transfer or discharge notice; and
- The nature of the emergency that requires the transfer or discharge.

Rules and Regulations—Emergency Involuntary Transfer or Discharge (Section 7)

The bill would require the Secretary to adopt rules and regulations to define an emergency or establish other necessary criteria to be used by a facility when determining whether a resident may be subject to such transfer or discharge.

Other Remedies (Section 4)

The bill would state nothing in its provisions could be construed to limit any other remedies available under law to residents or facilities.

Background

The bill was introduced by the House Committee on Judiciary at the request of Representative Titus.

House Committee on Judiciary

During the House Committee hearing on February 9, 2023, **proponent** testimony was provided by representatives of the AARP, Alzheimer's Association, Disability Rights Center of Kansas, Kansas advocates for Better Care, Kansas Legal Services, and North Central-Flint Hills Area Agency on Aging and by the State Long-Term Care Ombudsman and a private citizen. The proponents stated the bill would create an appeal process to balance the patient's rights against the rights of the facility and was a result of a Judicial Council study.

Written-only proponent testimony was provided by a representative of the Kansas Trial Lawyers Association and a private citizen.

Written-only neutral testimony was provided by the Commissioner for the Kansas Department for Aging and Disability Services (KDADS) Survey, Certification and Credentialing Commission and a representative of the Kansas Judicial Council.

Opponent testimony was provided by representatives of Guest Home Estates, Kansas Adult Care Executives, Kansas Center for Assisted Living and Kansas Health Care Association, LeadingAge Kansas, and Sunflower Care Home.

The opponents stated concerns with the cost of hiring extra staff and more restrictive criteria in accepting patients.

Written-only opponent testimony was provided by a representative of Bethany Village.

The House Committee recommended a substitute bill be passed incorporating amendments to remove provisions concerning the appeals process for certain transfers or discharges. The substitute bill incorporates an amendment to require the Secretary investigate violations and the State Long-Term Care Ombudsman to produce an annual report.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, KDADS indicates the bill would increase expenditures by \$487,990 from the State General Fund for salaries to fill an additional 2.00 FTE attorney positions, 1.00 FTE legal assistant position, and 1.00 FTE registered nurse position, and for contractual services with the Office of Administrative Hearings (OAH). The additional positions would be needed due to the new duties assigned to KDADS by the bill. KDADS estimates there would be between 10 and 15 requests for review or appeals per month.

The OAH indicates it would be required to implement an expedited hearing process due to the provisions of the bill. This would require dedicated docket space and administrative law judge time to accommodate the requirements of the bill. The OAH anticipates a larger influx of cases at the outset due to awareness, but the number of overall cases would be less than what is currently handled concerning similar cases. It is presumed that OAH would be able to absorb the increased caseload within the current agency framework.

The Office of Judicial Administration indicates the bill would have a negligible fiscal effect on Judicial Branch expenditures and revenues. Any fiscal effect associated with

enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Adult care home; Adult Care Home Licensure Act; involuntary transfer; involuntary discharge; Secretary for Aging and Disability Services