



GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 22-02

Licensure, Certification, and Registration for persons and Licensure of "Adult Care Homes" during state of disaster emergency

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis created by the substantial change in usual healthcare operations and the level of care it is possible to deliver due to the pandemic and public health emergency of COVID-19;

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with more than 56 million cases of the illness and more than 825,000 deaths as a result of the illness across the United States;

WHEREAS, as of January 3, 2022, there have been over 534,000 positive cases of COVID-19 in Kansas, spread among all counties, with over 7,000 deaths as a result of the illness;

WHEREAS, on April 2, 2020, the Centers for Medicare & Medicaid Services (CMS) issued the *COVID-19 Long-Term Care Facility Guidance* to all states regarding the recommendations to help mitigate the spread of the 2019 Novel Coronavirus and to advise states on how to comply with CMS and CDC guidance to keep residents and patients safe and to maintain adequate staff levels and thereby to reduce the imminent threat of new outbreaks of COVID-19;

WHEREAS, on April 13, 2020, CMS issued a supplemental guidance *2019 Novel Coronavirus (COVID-19) Long-Term Care Facility Transfer Scenarios* (QSO-20-25-NH) to all states, which further provided details of how to transfer/discharge residents between facilities for the purpose of cohorting residents based on COVID-19 status as well as other aspects of how to provide care in long-term care facilities;

WHEREAS, as authorized by the *COVID-19 Long-Term Care Facility Guidance* and additional guidance issued by CMS, blanket federal waivers for certain CMS requirements of participation for adult care homes have been issued; thus suspension/waiver of certain state statutes, regulations, and administrative rules has been necessary to reduce the risk of further exposure and spread of COVID-19 and to assist with mitigation efforts during the COVID-19 public health emergency;

WHEREAS, "adult care homes," for purposes of this order, are defined as 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, 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 in accordance with K.S.A. 39-923(a);

WHEREAS, the continued spread of COVID-19 throughout Kansas and the potential for further spread in the days and weeks ahead is part of the toughest surge the medical and adult care home communities have faced since the pandemic began in 2020, and threatens local health care systems with overload of hospital beds, personal protective equipment, testing and treatment supplies, and other critical resources for responding to the COVID-19 pandemic;

WHEREAS, after two years of working of under pandemic conditions, adult care homes are finding it increasingly difficult to hire and retain staff who are willing to work in a facility. The reasons for staff leaving the industry are similar to what other health care providers have been reporting. Adult care homes, like hospitals, are currently operating at crisis staffing levels, struggling to maintain sufficient numbers of licensed and certified staff to provide safe and appropriate care to vulnerable residents. Providing flexibilities to allow adult care homes to rapidly expand staffing capacity for vulnerable residents that reside in adult care homes is a priority of this Administration;

WHEREAS, responding effectively to the urgent and steep demands created by the COVID-19 pandemic will require the help of as many health care professionals, certified staff, and other temporary staff as possible, working in adult care homes in whatever capacities are appropriate to their respective education, training, and experience. To ensure adult care homes are fully enabled to provide the critical assistance and care needed by this state and its residents during this unprecedented emergency, it is reasonable and necessary to provide limited and temporary relief from certain restrictions and requirements governing the provision of services provided in adult care homes;

WHEREAS, in these challenging times this Administration will do whatever it can to avoid immediate dangers to the health, safety, and welfare of Kansans, including providing guidance and support for local authorities who are making difficult and important decisions to protect the health and safety of their populations, as well as certainty to the broader population that essential functions will not be interrupted; and

WHEREAS, to address the dangers of the above conditions, suspension of certain state statutes and regulations is necessary.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including the authority granted me by K.S.A 48-924 and K.S.A 48-925, in order to address the conditions noted above related to COVID-19, I hereby direct and order the following:

Provisions Specific to Persons

1. Renewal deadlines shall be extended for any occupational or professional license, certificate, or registration issued by KDADS or any board, commission, or other licensing authority under the jurisdiction of KDADS or the Board of Adult Care Home Administrators (BACHA).
2. A temporary license, certification, or registration may be issued for persons who were previously licensed, certified, or registered by KDADS or any board, commission, division, or other licensing authority under the jurisdiction of KDADS or BACHA as long as the person was in good standing prior to the lapse of the license, certification, or registration. Additionally, the license, certificate, or registration may not have been issued more than five years from the date of this order.
3. KDADS and any board, commission, division, or other licensing authority under the jurisdiction of KDADS or BACHA shall extend the deadlines for any continuing education requirements mandated by statute or regulation until the termination of the State of Disaster Emergency.
4. KDADS and any board, commission, division, or other licensing authority under the jurisdiction of KDADS or BACHA shall waive any late fee associated with any license, certificate or registration associated with Sections 1 and 2 above.
5. For purposes of this Order, "in good standing" shall include a license, certificate or registration that is subject to probation, or non-disciplinary conditions, limitations, or restrictions, but shall not include a license, certificate or registration that is revoked, cancelled, or surrendered. If the records of KDADS or any board, commission, division, or other licensing authority under the jurisdiction of KDADS or BACHA reflect 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.

6. A temporary aide authorization may be issued for persons who receive minimum training within the nursing facility as set forth by KDADS. The facility, at a minimum, needs to ensure persons with a temporary aide authorization are competent to perform/execute their duties, including but not limited to: infection control, proper patient handling, and how to effectively assist with the performance of activities of daily living.
7. A temporary authorization may be issued for persons who were not previously licensed, certified, or registered by Kansas or any other state in the United States of America. The individuals who may be served by those who hold this temporary authorization are individuals who only require minimal supervision or assistance with activities of daily living. The facility, at a minimum, needs to ensure persons with a temporary authorization are competent to perform/execute their duties, including but not limited to: infection control, proper patient handling, and how to effectively assist with the performance of activities of daily living.

Provisions Specific to Facilities/Units/Locations

8. The Secretary of KDADS shall have authority to issue a provisional license, pursuant to K.S.A. 39-929, to an adult care home that submits a checklist, on a form approved by KDADS; and a detailed plan for isolation/cohorting of residents in response to the COVID-19 pandemic. The Secretary's approval of the checklist and plan may require temporary suspension of standards, requirements, rules, and regulations related to the physical environment, a change in bed capacity, or change in bed classification for the adult care home. The requirement of K.S.A. 39-929 that the state fire marshal approve issuance of the provisional license shall be suspended only if KDADS has approved the adult care home's submission of the checklist and plan for cohorting residents in response to the COVID-19 pandemic. The provisional license shall be valid until the termination of the State of Disaster Emergency. Otherwise, if a provisional license is issued by KDADS for reasons other than the isolation/cohorting of residents in response to the COVID-19 pandemic, all requirements of K.S.A. 39-929 shall be effective.

This document shall be filed with the Secretary of State as Executive Order No. 22-02. It shall become effective immediately and remain in force until rescinded, until revoked in accordance with K.S.A. 48-925(b), or until the statewide State of Disaster Emergency proclaimed on January 6, 2022, ends, whichever is earlier.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR

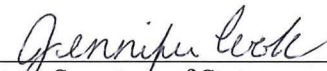


DATED

1.6.22

FILED
JAN 06 2022
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SECRETARY OF STATE


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