

MENTALLY ILL, INCAPACITATED, DEPENDENT PERSONS

39-925. Administration of act. The administration of this act shall be under the secretary of health and environment as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire and safety authorities and other agencies of government in this state.

History: L. 1961, ch. 231, § 3; L. 1975, ch. 462, § 41; L. 1980, ch. 182, § 10; July 1.

39-928. Issuance of license, when; inspections and investigations; reports; time license effective; nontransferable; display; contents of license. Upon receipt of an application for license, the licensing agency with the approval of the state fire marshal shall issue a license if the applicant is fit and qualified and if the adult care home facilities meet the requirements established under this law. The licensing agency, the state fire marshal, and the county, city-county or multicounty health departments or their designated representatives shall make such inspections and investigations as are necessary to determine the conditions existing in each case and a written report of such inspections and investigations and the recommendations of the state fire marshal and the county, city-county or multicounty health department or their authorized agents shall be filed with the licensing agency. The licensing agency and the state fire marshal may designate and use county, city-county or multicounty health departments and local fire and safety authorities as their agents in making such inspections and investigations as are deemed necessary or advisable. Such local authorities are hereby authorized, empowered and directed to perform such duties as are designated. A copy of any inspection reports required by this section shall be furnished to the applicant.

A license, unless sooner suspended or revoked, shall remain in effect upon filing by the licensee, and approval by the licensing agency and the state fire marshal or their duly authorized agents, of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes and payment of an annual fee. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. It shall be posted in a conspicuous place in the adult care home. If the annual report is not so filed and annual fee is not paid, such license is automatically canceled. Any license granted under the provisions of this act shall state the type of facility for which license is granted, number of residents for which granted, the person or persons to whom granted, the date and such additional information and special limitations as are deemed advisable by the licensing agency.

History: L. 1961, ch. 231, § 6; L. 1972, ch. 171, § 5; L. 1980, ch. 182, § 11; L. 1989, ch. 126, § 1; July 1.

39-929. Provisional license, approval; terms; extension.

A provisional license may be issued to any adult care home, the facilities of which are temporarily unable to conform to all the standards, requirements, rules and regulations established under the provisions of this act: *Provided, however,* That the issuance of such provisional license shall be approved by the state fire marshal. A provisional license may be issued to provide time to make necessary corrections for not more than six (6) months. One additional successive six-month provisional license may be granted at the discretion of the licensing agency. A change of ownership during the provisional licensing period will not extend the time for the requirements to be met that were the basis for the provisional license nor entitle the new owner to an additional provisional license.

History: L. 1961, ch.231, § 7; L. 1972, ch. 171, § 6; July 1.

39-935. Inspections; reporting; access to premises; exit interviews; unannounced inspections; inspection reports, posting and access.

Inspections shall be made and reported in writing by the authorized agents and representatives of the licensing agency and state fire marshal, and of the county, city-county and multicounty health departments as often and in the manner and form prescribed by the rules and regulations promulgated under the provisions of this act. Access shall be given to the premises of any adult care home at any time upon presenting adequate identification to carry out the requirements of this section and the provisions and purposes of this act, and failure to provide such access shall constitute grounds for denial or revocation of license. A copy of any inspection reports required by this section shall be furnished to the applicant, except that a copy of the preliminary inspection report signed jointly by a representative of the adult care home and the inspector shall be left with the applicant when an inspection under this section is completed. This preliminary inspection report shall constitute the final record of deficiencies assessed against the adult care home during the inspection, all deficiencies shall be specifically listed and no additional deficiencies based upon the data developed at that time shall be assessed at a later time. An exit interview shall be conducted in conjunction with the joint signing of the preliminary inspection report.

The authorized agents and representatives of the licensing agency shall conduct at least one unannounced inspection of each adult care home within 15 months of any previous inspection for the purpose of determining whether the adult care home is complying with applicable statutes and rules and regulations relating to the health and safety of the residents of the adult care home. The statewide average interval between inspections shall not exceed 12 months.

Every adult care home shall post in a conspicuous place a notice indicating that the most recent inspection report and related documents may be examined in the office of the administrator of the adult care home. Upon request, every adult care home shall provide to any person a copy of the most recent inspection report and related

documents, provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

History: L. 1961, ch. 231, § 13; L. 1972, ch. 171, § 10; L. 1977, ch. 152, § 1; L. 1978, ch. 162, § 13; L. 1980, ch. 182, § 14; L. 1989, ch. 126, § 2; July 1.

39-938. Compliance with requirements and rules and regulations of licensing and other agencies; exceptions.

Adult care homes shall comply with all the lawfully established requirements and rules and regulations of the secretary of health and environment and the state fire marshal, and any other agency of government so far as pertinent and applicable to adult care homes, their buildings, operators, staffs, facilities, maintenance, operation, conduct, and the care and treatment of residents. The administrative rules and regulations of the state board of cosmetology and of the Kansas board of barbering shall not apply to adult care homes.

History: L. 1961, ch. 231, § 16; L. 1972, ch. 171, § 13; L. 1975, ch. 462, § 45; L. 1990, ch. 225, § 23; July 1.

AGO: 89-9

39-945. Correction orders; issuance; contents. A correction order may be issued by the secretary of health and environment or the secretary's designee to a person licensed to operate an adult care home whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of health and environment inspects or investigates an adult care home and determines that the adult care home is not in compliance with the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules and regulations promulgated thereunder which individually or jointly affects significantly and adversely the health, safety, nutrition or sanitation of the adult care home residents. The correction order shall be served upon the licensee either personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and shall specify the time allowed for correction.

History: L. 1978, ch. 161, § 1; L. 1980, ch. 127, § 1; L. 1988, ch. 146, § 1; July 1.

39-946. Civil penalty; issuance; notice of assessment; factors in determining amount of civil penalty; enforcement.

(a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of health and environment, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of health and environment may assess a civil penalty in an amount not to exceed \$500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the defi-

ciency as specified in the correction order that the adult care home has not corrected the deficiency or deficiencies listed in the correction order, but the maximum assessment shall not exceed \$2,500. Prior to the assessment of a civil penalty, the case shall be reviewed by a person licensed to practice medicine and surgery. A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) Before the assessment of a civil penalty, the secretary shall consider the following factors in determining the amount of the civil penalty to be assessed: (1) The severity of the violation; (2) the good faith effort exercised by the adult care home to correct the violation; and (3) the history of compliance of the ownership of the adult care home with the rules and regulations. If the secretary of health and environment finds that some or all deficiencies cited in the correction order have also been cited against the adult care home as a result of any inspection or investigation which occurred within 18 months prior to the inspection or investigation which resulted in such correction order, the secretary of health and environment may double the civil penalty assessed against the licensee of the adult care home, the maximum not to exceed \$5,000.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary of health and environment may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

History: L. 1978, ch. 161, § 2; L. 1980, ch. 127, § 2; L. 1988, ch. 146, § 2; July 1.

39-1504. Same; requirements for registration. The secretary shall administer the adult family home registration program in accordance with the following requirements:

(a) (1) The home shall meet health standards and safety regulations of the community and the provisions of chapter 20 of the national fire protection association, life safety code, pamphlet no. 101, 1981 edition.

(2) The home shall have a written plan to get persons out of the home rapidly in case of fire, tornado or other emergency.

(3) No more than two clients shall be in residence at any one time.

(4) The home shall have adequate living and sleeping space for clients.

(5) Each room shall have an operable outside window.

(6) Electric fans shall be made available to reduce the temperature if there is no air conditioning. Rooms shall be heated, lighted, ventilated and available.

(7) Sleeping rooms shall have space for personal items.

(8) Each client shall have a bed which is clean and in good condition.

(9) Lavatory and toilet facilities shall be accessible, available and in working order.

(10) The kitchen shall be clean with appliances in good working order.

(b) (1) A healthy and safe environment shall be maintained for clients.

(2) There shall be a telephone in the home.

(3) The provider may assist a client with the taking of medications when the medication is in a labeled bottle which clearly shows a physician's orders and when the client requires assistance because of tremor, visual impairment, or similar reasons due to health conditions. The provider may assist or perform for the client such physical activities which do not require daily supervision such as assistance with eating, bathing and dressing, help with brace or walker and transferring from wheelchairs.

(4) There shall be no use of corporal punishment, restraints or punitive measures.

(5) The house shall be free from accumulated dirt, trash and vermin.

(6) Meals shall be planned and prepared for adequate nutrition, and for diets if directed by a physician.

(c) (1) The provider shall be at least 18 years of age and in good health at the time of initial application for registration. A written statement must be received from a physician, nurse practitioner, or physician's assistant stating that the applicant and the members of the applicant's household are free of any infectious or communicable disease or health condition and are physically and mentally healthy. Such statements shall be renewed every two years.

(2) The provider shall not be totally dependent on the income from the clients for support of the provider or the provider's family.

(3) A criminal conviction shall not necessarily exclude registration as an adult family home; but an investigation thereof will be made as part of the determination of the suitability of the home.

(4) The provider shall be responsible for supervision at all times and shall be in charge of the home and provision of care, or shall have a responsible person on call. Any such substitute responsible person shall meet the same requirements as the provider.

(5) The provider is responsible for encouraging the client to seek and utilize available services when needed.

(6) The provider shall comply with the requirements of state and federal regulations concerning civil rights and section 504 of the federal rehabilitation act of 1973.

(7) The provider shall assure that clients have the privilege of privacy as well as the right to see relatives, friends and participate in regular community activities.

(8) The provider shall keep client information confidential. The use or disclosure of any information concerning a client for any purpose is prohibited except on written consent of the client or upon order of the court.

(9) The provider shall maintain contact with an assigned social worker and shall allow the secretary and authorized representatives of the secretary access to the home and grounds and to the records related to clients in residence.

(10) The provider shall inform the social worker immediately of any unscheduled client absence from the home.

(11) The provider is responsible for helping clients maintain their clothing.

(12) The provider shall furnish or help clients arrange for transportation.

(13) The provider shall help a client arrange for emergency and regular medical care when necessary.

(14) The provider shall submit any information relating to the operation of the adult family home which is required by the secretary.

History: L. 1983, ch. 142, § 4; April 21.