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GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 20-23

Licensure, Certification, and Registration for persons and Licensure of "Adult Care Homes" during public health 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—the pandemic and public health emergency of COVID-19—with effects of illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship to Kansas citizens;

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 579,000 cases of the illness and more than 22,000 deaths as a result of the illness across the United States;

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020;

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020;

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 50 l (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act");

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared a national emergency that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020;

WHEREAS, as of this date, there have been over 1,426 positive cases of COVID-19 in Kansas, spread among 62 counties and 69 deaths as a result of the illness;

WHEREAS, the continued spread of COVID-19 throughout Kansas and the potential for further spread in the days and weeks ahead 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, on April 2, 2020 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 Coronovirus 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;

WHEREAS, on April 13, 2020 CMS issued a supplemental guidance *2019 Novel Cornovirus (COVID-19) Long-Term Care Facility Transfer Scenarios* 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 is 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, licensed facilities regularly undergo licensing visits, extensive training, strict adherence to admission/transfer/discharge requirements for residents, specific requirements for how nursing facilities are physically structured, and many other requirements that require approval/collaboration from the various state agencies;

WHEREAS, licensed facilities and units also provide significant services within Kansas, and the current licensing structure, which is carried out regularly when the state and country are not in the midst of a pandemic, would detrimentally impact the provision of services and care provided to Kansans; and

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 protecting the health and welfare of residents of state facilities.

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 slow the spread of COVID-19, I hereby direct and order the following:

Provisions Specific to Persons

1. Pursuant to Executive Order 20-19, all state agencies who work with or collaborate with KDADS shall extend renewal deadlines for any occupational or professional license, certificate, or registration issued by a state agency or any board, commission,

or other licensing authority within a state agency to a person or any for-profit or non-profit business or organization.

2. A temporary license, certification, or registration may be issued for persons who were previously licensed, certified, or registration issued by a Kansas state agency or any board, commission, division or other licensing authority within the State 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. 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.

4. 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

5. The duties and responsibilities identified in K.S.A. 39-928 as it relates to the State Fire Marshall, those who contract with the State Fire Marshall, or other entities who perform similar duties to the State Fire Marshall regarding inspections of adult care homes shall suspend inspection duties for new or renewal KDADS-licensed facilities, units, or locations during the State of Disaster Emergency. This suspension shall remain valid until 90 days following the termination of the State of Disaster Emergency.

6. Any initial, renewal, modification, late, delinquent, penalty, or expiration fees associated with any Kansas-licensed adult care home that occur after March 12, 2020 are suspended until 90 days following the termination of the State of Disaster Emergency.

7. Any fees associated with reducing, increasing, or modifying an adult care home's bed capacity, are waived until 90 days following the termination of the State of Disaster Emergency. Any modification to bed capacity during the State of Disaster Emergency shall not impact the amount of quality care assessment owed by the adult care home, unless there is a change of ownership. Receiverships are exempt from this modification

to quality care assessments. Every adult care home shall return to the original bed capacity authorized prior to the State of Disaster Emergency.

8. Due to the emergency, and in accordance with K.S.A. 39-936(g), for transfers or discharges as a result of the COVID-19 status of residents, the 30-day notification requirements in K.A.R. 26-39-102(f) and K.A.R. 26-39-101(g), are suspended until 30 days after the termination of the State of Disaster Emergency relating to isolation of patients necessary in response to the COVID-19 pandemic. The facility shall provide KDADS written notice within 5 calendar days of such a change in capacity/transfer/discharge.

9. The requirement for at least a 30-day notification before the change of services identified in K.A.R. 26-39-103(c)(2) is suspended until 30 days after the termination of the State of Disaster Emergency.

10. The requirement to produce documents for inspection within 2 calendar days of the request under K.A.R. 26-39-103(d)(1) is suspended until there is a termination of the State of Disaster Emergency.

11. The free choice requirement under K.A.R. 26-39-103(f)(1) is suspended for any change in physician made in response to the COVID-19 pandemic until the State of Disaster Emergency expires or is terminated.

12. The requirement to develop a plan as identified in K.A.R. 28-39-151(h)(2)(A) is suspended until 45 days after the termination of the State of Disaster Emergency, unless there are extenuating circumstances which may extend the deadline beyond 45 days at the discretion of KDADS.

13. The right to meet/participate in organized groups identified in K.A.R. 28-39-153(c) is suspended until there is a termination of the State of Disaster Emergency.

14. Consistent with CMS' guidance issued on April 2, 2020, adult care homes licensing requirements identified in K.S.A. 39-939(a), K.A.R. 26-40-301, K.A.R. 26-40-303 through 26-40-305, and K.A.R. 28-39-254 through 28-39-256 are suspended until 90 days following the termination of the State of Disaster Emergency. After the 90-day timeframe, every adult care home shall return to the original statutory/regulatory requirements that were in effect prior to the State of Disaster Emergency.

General Provisions and Definitions

15. Additional guidance shall be provided by the responsible state agency to assist with implementation of this executive order.

16. For purposes of this Order, a "state agency" has the meaning set forth in K.S.A. 75-3701, and reports to or is otherwise located within an executive office under the control of the Governor.

17. For purposes of this Order, "in good standing" shall have the definition as stated in Executive Order 20-19.

18. Nothing in this Order shall prevent any state agency or any board, commission, division or other licensing authority within a state agency from exercising its statutory or regulatory enforcement authority during the State of Disaster Emergency.

19. This Order should be read in conjunction with previous executive orders responding to the COVID-19 pandemic.

This document shall be filed with the Secretary of State as Executive Order No. 20-23. It shall become effective immediately and remain in force until May 1, 2020, or until the statewide State of Disaster Emergency proclaimed on March 12, 2020, relating to COVID-19 expires, whichever is earlier.

THE GOVERNOR'S OFFICE BY THE GOVERNOR Laura Kelly

DATED 4.15.2020

Scott Schwab
Secretary of State

Byron A. Cook
Assistant Secretary of State

FILED
APR 15 2020
SCOTT SCHWAB
SECRETARY OF STATE