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GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 20-56

Amended 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, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 2,900,000 cases of the illness and more than 130,000 deaths as a result of the illness across the United States;

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020, and such emergency has been extended to September 15, 2020 pursuant to Sec. 5(a) of House Bill 2016 (special session 2020);

WHEREAS, as of this date, there have been over 16,901 positive cases of COVID-19 in Kansas, spread among 98 counties and 280 deaths as a result of the illness;

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 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 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, on May 18, 2020, CMS issued QSO-20-30-NH- *Nursing Home Reopening Recommendations for State and Local Officials* that includes recommendations for State and local officials to help determine the level of mitigation needed to prevent the transmission of COVID-19 in nursing homes. The recommendations provide guidance in the following areas: (1) criteria for relaxing certain restrictions and mitigating the risk of resurgence through a phased approach;

(2) visitation and service considerations; and (3) restoration of certain survey activities in each phase.

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;

WHEREAS, on April 15, 2020, I executed Executive Order 20-23 addressing licensure, certification, and registration regarding adult care homes, and the justifications for that Order are fully set forth therein and incorporated herein by reference;

WHEREAS, on May 26, 2020, I executed Executive Order 20-41 addressing licensure, certification, and registration regarding adult care homes, and the justifications for that Order are fully set forth therein and incorporated herein by reference;

WHEREAS, the operative provisions of Executive Orders 20-23 and 20-41 were not only necessary to deal with the public health crisis caused by COVID-19 but in many respects are still necessary to address the imminent threat of new COVID-19 outbreaks 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 preventing threats to the health and welfare of residents of state facilities.; and

WHEREAS, this Administration will also ensure State and local officials have appropriate statutory and regulatory authority available to protect the rights, health, safety and welfare of residents as each adult care home implements its phased reopening plan in accordance with CMS' May 18, 2020 reopening guidance and reopening guidance documents issued by KDADS.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including but not limited to the authority granted me by K.S.A 48-924 and K.S.A 48-925(b), (c)(1), and (c)(11), as amended by 2020 HB 2016, in order to respond to and mitigate the spread of COVID-19, I hereby direct and order the following:

Provisions Specific to Persons

1. Pursuant to Executive Order 20-49, 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 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 for 90 days following 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.

6. If KDADS has granted a provisional license to the adult care home, pursuant to K.S.A. 39-929, for the purpose of isolation/cohorting of residents in response to the COVID-19 pandemic, the duties and responsibilities identified in K.S.A. 39-928 as it relates to the State Fire Marshal, those who contract with the State Fire Marshal, or other entities who perform similar duties to the State Fire Marshal regarding inspections of adult care homes shall be suspended for new or renewal KDADS-licensed facilities, units, or locations for a period of 90 days following the termination of the State of Disaster Emergency. K.S.A. 39-928 shall otherwise be effective.

7. With the exception of quality care assessments and penalties arising therefrom, 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.

8. Any fees associated with reducing, increasing, or modifying an adult care home's bed capacity for the purpose of cohorting residents in response to the COVID-19 pandemic, are waived until 90 days following the termination of the State of Disaster Emergency. Any modification to bed capacity for the purpose of cohorting residents in response to the COVID-19 pandemic 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.

9. If KDADS has granted a provisional license to an adult care home, pursuant to K.S.A. 39-929, for the purpose of isolation/cohorting of residents in response to the COVID-19 pandemic, K.A.R. 26-39-101(g) is suspended until 30 days after the termination of the State of Disaster Emergency. The facility shall provide KDADS written notice within 5 calendar days of such a change in capacity. If KDADS has not issued a provisional license as specified in this section, K.A.R. 26-39-101(g) shall otherwise be effective.

10. If KDADS has granted a provisional license to the adult care home, pursuant to K.S.A. 39-929, for the purpose of isolation/cohorting of residents in response to the COVID-19 pandemic, 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. K.A.R. 26-39-103(c)(2) shall otherwise be effective.

11. The requirement to produce documents for inspection within 2 calendar days of the request under K.A.R. 26-39-103(d)(1) is amended to require production of documents for inspection within 7 calendar days of the request until there is a termination of the State of Disaster Emergency. After the termination of the State of Disaster Emergency, the response timeframe for K.A.R. 26-39-103(d)(1) shall revert to the original requirement that was in effect immediately prior to the State of Disaster Emergency.

12. The free choice requirement under K.A.R. 26-39-103(f)(1) related to any change in physician shall be suspended until there is a termination of the State of Disaster Emergency only if one or more of the following events occur in an adult care home: (a) State or local health authorities have not approved the visitation portion of an adult care home's phased reopening plan; (b) State or local authorities have imposed restrictions upon visitation in an adult care home; or (c) the resident's chosen physician cannot meet the screening requirements of the local health authorities. K.A.R. 26-39-103(f)(1) shall otherwise be effective.

13. If KDADS has granted a provisional license to the adult care home, pursuant to K.S.A. 39-929, for the purpose of isolation/cohorting of residents in response to the COVID-19 pandemic, the requirement to develop a comprehensive care 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. The requirement for the adult care home to develop the comprehensive plan may be extended beyond 45 days, at the discretion of KDADS, if extenuating circumstances exist. K.A.R. 28-39-151(h)(2)(A) shall otherwise be effective.

14. 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 only to the extent necessary to implement an adult care home's phased reopening plan and to implement any applicable recommendations or mandates from State or local health authorities. K.A.R. 28-39-153(c) shall otherwise be effective.

15. If KDADS has granted a provisional license to the adult care home, pursuant to K.S.A. 39-929, for the purpose of isolation/cohorting of residents in response to the COVID-19 pandemic, 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. 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 shall otherwise be effective

General Provisions and Definitions

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

17. 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.

18. For purposes of this Order, "in good standing" shall include a license, certificate, permit, or registration that is subject to probation, or non-disciplinary conditions, limitations, or restrictions, but shall not include a license, certificate, permit, or registration that is revoked, cancelled, surrendered, or suspended. Any license,

certificate, permit, or registration that is subject to disciplinary conditions, limitations, or restrictions shall remain subject to such conditions, limitations or restrictions

19. 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.

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

21. Executive Order 20-41, as extended by Executive Order 20-49, is rescinded and replaced by this order.

This document shall be filed with the Secretary of State as Executive Order No. 20-56. It shall become effective immediately and remain in force until rescinded, until September 15, 2020, or until the statewide State of Disaster Emergency extended by House Bill 2016 enacted during the June 2020 special session relating to COVID-19, expires, whichever is earlier.

THE GOVERNOR'S OFFICE BY THE GOVERNOR _____

DATED 7.8.2020

_____
Secretary of State

_____
Assistant Secretary of State

FILED
JUL 08 2019
SCOTT SCHWAB
SECRETARY OF STATE