



GOVERNOR LAURA KELLY

**EXECUTIVE ORDER NO. 21-12**

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 – 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 now more than 30,147,000 cases of the illness and more than 547,000 deaths as a result of the illness across the United States;

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

**WHEREAS**, 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 that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020;

**WHEREAS**, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020, and such emergency was extended to May 28, 2021, by Senate Bill 40 enacted during the 2021 Legislative Session;

**WHEREAS**, as of this date, there have been over 302,372 positive cases of COVID-19 in Kansas, spread among all 105 counties and 4,913 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**, on May 18, 2020, CMS issued QSO-20-30-NH *Nursing Home Reopening Recommendations for State and Local Officials* that included 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**, on September 17, 2020, CMS issued QSO-20-39-NH *Nursing Home Visitation – COVID-19* that provided new guidance for visitation in nursing facilities during the COVID-19 public health emergency. The guidance also provided reasonable ways a nursing facility could safely facilitate in-person visitation to address the psychosocial needs of residents based on a facility’s structure and residents’ needs, and in compliance with core principles and best practices that reduce the risk of COVID-19 transmission;

**WHEREAS**, on March 10, 2021, CMS issued revised QSO-20-39-NH to issue new guidance for visitation in nursing facilities during the public health emergency, including the impact of COVID-19 vaccination. The revised CMS visitation guidance allows for increased visitation in nursing facilities due to the high vaccination rate in the resident population that reside in nursing facilities, but maintains the core principles of COVID-19 infection prevention and establishes standards to carefully balance the psychosocial needs of residents with infection control precautions to protect unvaccinated residents and staff;

**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 that order was extended by Executive Orders 20-41, 20-56, 20-64, and 21-02;

**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;

**WHEREAS**, due to progress Kansas counties have made towards Vaccination Phases 1 and 2, this Administration, like CMS, will also ensure a careful balance is maintained to allow for visitation to occur in adult care homes in accordance with CMS and CDC guidance and core principles to address the psychosocial needs of the residents; 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 visitation plan in accordance with CMS March 10, 2021 Revised QSO-20-39-NH guidance on Nursing Home Visitation – COVID-19.

**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), in order to respond to and mitigate the spread of 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.
9. 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 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 be suspended for new or renewal KDADS-licensed facilities,

units, or locations until the termination of the State of Disaster Emergency. K.S.A. 39-928 shall otherwise be effective.

10. 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 the termination of the State of Disaster Emergency.
11. 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 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. Upon termination of the State of Disaster Emergency, every adult care home shall return to the original bed capacity authorized prior to the commencement of the State of Disaster Emergency on March 12, 2020, unless a Change of Resident Capacity form was submitted to KDADS after March 12, 2020, requesting an increase or decrease of bed capacity for reasons other than the COVID-19 public health emergency and the appropriate fee was paid.
12. 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 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.
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 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 the termination of the State of Disaster Emergency. K.A.R. 26-39-103(c)(2) shall otherwise be effective.
14. 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 commencement of the State of Disaster Emergency on March 12, 2020.
15. 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 authorities have imposed restrictions upon visitation in an adult care

home; or (b) 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.

16. 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 the termination of the State of Disaster Emergency. K.A.R. 28-39-151(h)(2)(A) shall otherwise be effective.
17. 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 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.

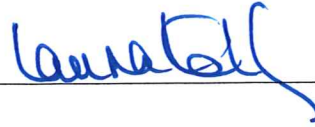
### **General Provisions and Definitions**

18. Additional guidance shall be provided by the responsible state agency to assist with implementation of this executive order.
19. 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.
20. 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.
21. 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. 21-12. It shall become effective immediately, and remain in force until rescinded or until the statewide State of Disaster Emergency extended by Section 5 of Senate Bill 40 enacted during the 2021 Legislative Session and as extended by any subsequent enactment or resolution expires, whichever is earlier.

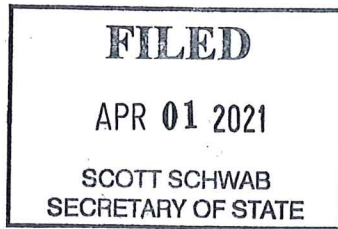
THE GOVERNOR'S OFFICE

BY THE GOVERNOR



DATED

4.1.21



Secretary of State

Assistant Secretary of State