

CHAPTER 141 (HB 148)

AN ACT relating to assisted living communities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15 of this Act:

- (1) *"Activities of daily living" means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;*
- (2) *"Assistance with self-administration of medication" means:*
 - (a) *Reminding the client to take medications;*
 - (b) *Reading the medication's label;*
 - (c) *Confirming that medication is being taken by the client for whom it is prescribed;*
 - (d) *Opening the dosage packaging or medication container, but not removing or handling the actual medication;*
 - (e) *Storing the medication in a manner that is accessible to the client; and*
 - (f) *Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device;*
- (3) *"Assisted living community" means a series of living units on the same site, operated as one (1) business entity, and certified under Section 4 of this Act to provide services for five (5) or more adult persons not related within the third degree of consanguinity to the owner or manager;*
- (4) *"Client" means an adult person who has entered into a lease agreement with an assisted living community;*
- (5) *"Danger" means physical harm or threat of physical harm to one's self or others;*
- (6) *"Health services" has the same meaning as in KRS 216B.015;*
- (7) *"Instrumental activities of daily living" means activities to support independent living including, but not limited to, housekeeping, shopping, laundry, chores, transportation, and clerical assistance;*
- (8) *"Living unit" means a portion of an assisted living community occupied as the living quarters of a client under a lease agreement;*
- (9) *"Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device including, but not limited to, a walker, crutches, or wheelchair; and*
- (10) *"Office" means the Office of Aging Services.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Each living unit in an assisted living community shall:*

- (a) *Be at least two hundred (200) square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement;*
 - (b) *Include at least one (1) unfurnished room with a lockable door, private bathroom with a tub or shower, provisions for emergency response, window to the outdoors, and a telephone jack;*
 - (c) *Have an individual thermostat control if the assisted living community has more than twenty (20) units; and*
 - (d) *Have temperatures that are not under a client's direct control at a minimum of seventy-one (71) degrees Fahrenheit in winter conditions and a maximum of eightyone (81) degrees Fahrenheit in summer conditions if the assisted living community has twenty (20) or fewer units.*
- (2) *Each client shall be provided access to central dining, a laundry facility, and a central living room.*
 - (3) *Each assisted living community shall comply with applicable building and life safety codes.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The assisted living community shall provide each client with the following services according to the lease agreement:*
 - (a) *Assistance with activities of daily living and instrumental activities of daily living;*
 - (b) *Three (3) meals and snacks made available each day;*
 - (c) *Scheduled daily social activities that address the general preferences of clients; and*
 - (d) *Assistance with self-administration of medication.*
- (2) *Clients of an assisted living community may arrange for additional services under direct contract or arrangement with an outside agent, professional, provider, or other individual designated by the client if permitted by the policies of the assisted living community.*
- (3) *Upon entering into a lease agreement, an assisted living community shall inform the client in writing about policies relating to the contracting or arranging for additional services.*
- (4) *Each assisted living community shall assist each client upon a move-out notice to find appropriate living arrangements. Each assisted living community shall share information provided from the office regarding options for alternative living arrangements at the time a move-out notice is given to the client.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services shall establish by the promulgation of administrative regulation under KRS Chapter 13A, an initial and annual certification review process for assisted living communities that shall include an on-site visit. This administrative regulation shall establish procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.*

- (2) *No assisted living community shall operate unless its owner or manager has:*
 - (a) *Filed a current application for the assisted living community to be certified by the office; or*
 - (b) *Received certification of the assisted living community from the office.*
- (3) *No business shall market its services as an assisted living community unless its owner or manager has:*
 - (a) *Filed a current application for the assisted living community to be certified by the office; or*
 - (b) *Received certification of the assisted living community from the office.*
- (4) *The office shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the office.*
- (5) *Individuals designated by the office to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.*
- (6) *Upon conducting a certification review, the office shall assess an assisted living community certification fee in the amount of twenty dollars (\$20) per living unit that in the aggregate for each assisted living community is no less than three hundred dollars (\$300) and no more than one thousand six hundred dollars (\$1,600). The office shall submit to the Legislative Research Commission, by June 30 of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.*
- (7) *Notwithstanding any provision of law to the contrary, the office may request any additional information from an assisted living community or conduct additional on-site visits to ensure compliance with the provisions of Sections 1 to 15 of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *The office shall report to the Division of Licensing and Regulation any alleged or actual cases of health services being delivered by the staff of an assisted living community.*
- (2) *An assisted living community shall have written policies on reporting and recordkeeping of alleged or actual cases of abuse, neglect, or exploitation of an adult under KRS 209.030.*
- (3) *Any assisted living community staff member who has reasonable cause to suspect that a client has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation under KRS 209.030.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

A client shall meet the following criteria:

- (1) *Be ambulatory or mobile nonambulatory, unless due to a temporary health condition for which health services are being provided in accordance with subsections (2) and (3) of Section 3 of this Act; and*
- (2) *Not be a danger.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

A lease agreement, in no smaller type than twelve (12) point font, shall be executed by the client and the assisted living community and shall include: (1) Client data, for the purpose of providing service, to include:

- (a) A functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living;*
- (b) Emergency contact person's name;*
- (c) Name of responsible party or legal guardian, if applicable;*
- (d) Attending physician's name;*
- (e) Information regarding personal preferences and social factors;*
- (f) Advance directive under KRS 311.621 to 311.643, if desired by the client; and (g)*

Optional information helpful to identify services that meet the client's needs.

- (2) Assisted living community's policy regarding termination of the lease agreement;*
- (3) Terms of occupancy;*
- (4) General services and fee structure;*
- (5) Information regarding specific services provided, description of the living unit, and associated fees;*
- (6) Provisions for modifying client services and fees;*
- (7) Minimum thirty (30) day notice provision for a change in the community's fee structure;*
- (8) Minimum thirty (30) day move-out notice provision for client nonpayment, subject to applicable landlord or tenant laws;*
- (9) Provisions for assisting any client that has received a move-out notice to find appropriate living arrangements prior to the actual move-out date;*
- (10) Refund and cancellation policies;*
- (11) Description of any special programming, staffing, or training if an assisted living community is marketed as providing special programming, staffing, or training on behalf of clients with particular needs or conditions;*
- (12) Other community rights, policies, practices, and procedures;*
- (13) Other client rights and responsibilities, including compliance with subsections (2) and (3) of Section 3 of this Act; and*
- (14) Grievance policies that minimally address issues related to confidentiality of complaints and the process for resolving grievances between the client and the assisted living community.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) An assisted living community shall provide any interested person with a:*
 - (a) Consumer publication, as approved by the office, that contains a thorough description of Kentucky laws and regulations governing assisted living communities;*
 - (b) Standard consumer checklist provided by the office; and*

- (c) *Description of any special programming, staffing, or training if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions.*
- (2) *An assisted living community may refer a request for information required in subsection (1)(a) of this section to the office.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Staffing in an assisted living community shall be sufficient in number and qualification to meet the twenty-four (24) hour scheduled and unscheduled needs of its clients and the services provided.*
- (2) *One (1) awake staff member shall be on site at all times.*
- (3) *An assisted living community shall have a designated manager who is at least twenty-one (21) years of age, has at least a high school diploma or a General Educational Development diploma, and has demonstrated management or administrative ability to maintain the daily operations.*
- (4) *No employee who has an active communicable disease reportable to the Department for Public Health shall be permitted to work in an assisted living community if the employee is a danger to the clients or other employees.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

Assisted living community staff and management shall receive orientation and in-service education on the following topics as applicable to the employee's assigned duties:

- (1) *Client rights;*
- (2) *Community policies;*
- (3) *Adult first aid;*
- (4) *Cardiopulmonary resuscitation;*
- (5) *Adult abuse and neglect;*
- (6) *Alzheimer's disease and other types of dementia;*
- (7) *Emergency procedures;*
- (8) *Aging process;*
- (9) *Assistance with activities of daily living and instrumental activities of daily living;*
- (10) *Particular needs or conditions if the assisted living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions; and*
- (11) *Assistance with self-administration of medication.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit have a bathtub or shower.*
- (2) *Any assisted living community that was open or under construction on or before the effective date of this Act shall have a minimum of one (1) bathtub or shower for each five (5) clients.*
- (3) *Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit shall be at least two hundred (200) square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *Any assisted living community that provides services without filing a current application with the office or receiving certification by the office may be fined up to five hundred dollars (\$500) per day.*
- (2) *Any business that markets its services as an assisted living community without filing a current application with the office or receiving certification by the office may be fined up to five hundred dollars (\$500) per day.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

Religious orders providing assistance with activities of daily living, instrumental activities of daily living, and self-administration of medication to vowed members residing in the order's retirement housing shall not be required to comply with the provisions of Sections 1 to 15 of this Act.

SECTION 14. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

Any business, not licensed or certified in another capacity, that complies with some provisions of Sections 1 to 15 of this Act but does not provide assistance with any activities of daily living or assistance with self-administration of medication shall not be eligible for certification as an assisted living community under Sections 1 to 15 of this Act.

SECTION 15. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

If a person or business seeks financing for an assisted living community project, the office shall provide written correspondence to the lender, upon request, to denote whether the architectural drawings and lease agreement conditionally comply with the provisions of Sections 1 to 15 of this Act. The office may charge a fee of no more than two hundred fifty dollars (\$250) for the written correspondence to the lender.

Section 16. KRS 216.785 is amended to read as follows:

As used in KRS 216.785 to 216.793, unless the context otherwise requires:

- (1) *"Assisted living community" shall have the same meaning as in Section 1 of this Act.*
- (2) *"Crime" means a conviction of or a plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a*

sex crime. Conviction of or a plea of guilty to an offense committed outside the Commonwealth of Kentucky is a crime if the offense would have been a felony in Kentucky if committed in Kentucky.

- (3)~~(2)~~ "Direct service" means personal or group interaction between the employee and the nursing facility resident or the senior citizen.
- (4)~~(3)~~ "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in nursing facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies.
- (5)~~(4)~~—"Senior citizen" means a person sixty (60) years of age or older.

Section 17. KRS 216.789 is amended to read as follows:

- (1) No long-term care facility as defined by KRS 216.535(1), ~~or~~ nursing pool providing staff to a nursing facility, **or assisted living community** shall knowingly employ a person in a position which involves providing direct services to a resident **or client** if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.
- (2) A nursing facility, ~~or~~ nursing pool providing staff to a nursing facility, **or assisted living community** may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.
- (3) Each long-term care facility as defined by KRS 216.535(1), ~~or~~ nursing pool providing staff to a nursing facility, **or assisted living community** shall request all conviction information from the Justice Cabinet for any applicant for employment pursuant to KRS 216.793.
- (4) The long-term care facility, ~~or~~ nursing pool providing staff to a nursing facility, **or assisted living community** may temporarily employ an applicant pending the receipt of the conviction information.

Section 18. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for Mental Health and Mental Retardation Services of the Cabinet for Health Services, to the applicant for initial employment in **an assisted living community**, ~~a~~ nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the Department for Social Services or the Office of Aging Services of the Cabinet for Families and Children and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice Cabinet. The Justice Cabinet may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request and shall not exceed five dollars (\$5) per application.

Section 19. The following KRS section is repealed:

209.200 Assisted living residences -- Requirements for certification -- Procedures.

Approved March 20, 2000