

CHAPTER 73**(HB 439)**

AN ACT relating to licensure and regulation of health facilities and services.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *Effective for the period beginning July 1, 2004, and ending on September 1, 2005, any facility with beds licensed as nursing home beds may convert any of their licensed nursing home beds to licensed intermediate care facility beds.*
- (2) *Notwithstanding any other provision of law to the contrary, a certificate of need shall not be required for a conversion of licensed nursing home beds to licensed intermediate care facility beds under the authority provided in this Section.*
- (3) *Subsections (1) and (2) of this section shall not apply to any facility providing nursing facility services if the facility has a total bed capacity, as defined in Section 2 of this Act, greater than sixty (60) beds.*

Section 2. KRS 142.301 is amended to read as follows:

As used in KRS 142.301 to ~~142.363~~~~[142.359]~~:

- (1) "Cabinet" means the Revenue Cabinet;
- (2) "Charitable provider" means any provider which does not charge its patients for health-care items or services, and which does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government. The collaboration with public hospitals, agencies, or other providers in the delivery of patient care; affiliation with public institutions to provide health-care education; or the pursuit of research in cooperation with public institutions or agencies shall not be considered as the receipt of government support by a charitable provider;
- (3) "Dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration or use by a patient or other individual entitled to receive the prescription drug;
- (4) "Entity" means any firm, partnership, joint venture, association, corporation, company, joint stock association, trust, business trust, syndicate, cooperative, or other group or combination acting as a unit;
- (5) "Gross revenues" means the total amount received in money or otherwise by a provider for the provision of health-care items or services in Kentucky, less the following:
 - (a) Amounts received by any provider as an employee or independent contractor from another provider for the provision of health-care items or services if:
 1. The employing or contracting provider receives revenue attributable to health-care items or services provided by the employee or independent contractor receiving payment; and
 2. The employing or contracting provider is subject to the tax imposed by KRS 142.303, 142.307, 142.309, and 142.311 on the receipt of that revenue;
 - (b) Amounts received as a grant or donation by any provider from federal, state, or local government or from an organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code for:
 1. Research; or
 2. Administrative or operating costs associated with the implementation and operation of an experimental program;
 - (c) Salaries or wages received by an individual provider as an employee of a charitable provider, the federal government, or any state or local governmental entity;
 - (d) Salaries or wages received by an individual provider as an employee of a public university for the provision of services at a student health facility; and
 - (e) Amounts received by an HMO on a fixed, prepayment basis as premium payments.

- (6) "Health-care items or services" means:
- (a) Inpatient hospital services;
 - (b) Outpatient hospital services;
 - (c) Nursing-facility services;
 - (d) Services of intermediate-care facilities for the mentally retarded;
 - (e) Physicians' services provided prior to July 1, 1999;
 - (f) Licensed home-health-care-agency services;
 - (g) Outpatient prescription drugs; and
 - (h) HMO services;
- (7) "Health-maintenance organization" or "HMO" means an organization established and operated pursuant to the provisions of Subtitle 38 of KRS Chapter 304;
- (8) "Hospital" means an acute-care, rehabilitation, or psychiatric hospital licensed under KRS Chapter 216B;
- (9) "Hospital services" means all inpatient and outpatient services provided by a hospital. "Hospital services" does not include services provided by a noncontracted, university-operated hospital, or any freestanding psychiatric hospital, if necessary waivers are obtained by the Cabinet for Human Resources from the Health Care Financing Administration, or hospitals operated by the federal government;
- (10) "Health services secretary" means the secretary of the Cabinet for Health Services or that person's authorized representative;
- (11) "Inpatient hospital services," "outpatient hospital services," "intermediate-care-facility services for the mentally retarded," "physician services," "licensed home-health-care-agency services," and "outpatient prescription drugs" have the same meaning as set forth in regulations promulgated by the Secretary of the Department of Health and Human Services and codified at 42 C.F.R. pt. 440, as in effect on December 31, 1993;
- (12) "Medicaid" means the state program of medical assistance as administered by the Cabinet for Health Services in compliance with 42 U.S.C. sec. 1396;
- (13) "Nursing-facility services" means services provided by a licensed skilled-care facility, nursing facility, nursing home, or intermediate-care facility, excluding *services provided by* intermediate-care facilities for the mentally retarded *and services provided through licensed personal care beds*;
- (14) "Person" means any individual, firm, partnership, joint venture, association, corporation, company, joint stock association, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit and the legal successor thereof;
- (15) "Provider" means any person receiving gross revenues for the provision of health-care items or services in Kentucky, excluding any facility operated by the federal government;~~and~~
- (16) "Secretary" means the secretary of the Revenue Cabinet or that person's authorized representative; *and*
- (17) *"Total bed capacity" means the combination of licensed nursing home beds, licensed nursing facility beds, and licensed intermediate care facility beds.*

Section 3. KRS 142.361 is amended to read as follows:

- (1)~~As used in this section, "nursing facility services" means services provided by a licensed skilled care facility, nursing facility, nursing home, or intermediate care facility, excluding intermediate care facilities for the mentally retarded.~~
- (2)~~In addition to the tax imposed by KRS 142.307 on nursing facility services,]~~
- (a) A provider assessment is hereby imposed on *nursing facility services as provided in this subsection.*
 - (b) *The base for the assessment shall be determined on July 1 of each year, beginning on July 1, 2004, by dividing total gross revenues received by all nursing facilities for nursing facility services during the prior fiscal year by the total patient days for all nursing facilities attributable to nursing facility*

services during the prior fiscal year. The resulting amount shall be the base for the assessment imposed under this subsection, and shall be called the "average daily revenue per patient bed."

- (c) The assessment shall be imposed as follows:
1. a. At a uniform rate per non-Medicare patient day of up to one percent (1%) of the average daily revenue per patient bed applied to actual non-Medicare patient bed days by each nursing facility on or after July 1, 2004, for the provision of nursing facility services that are provided at a non-hospital based facility:
 - i. Containing licensed intermediate care facility beds as of September 1, 2005; and
 - ii. With a facility total bed capacity of sixty (60) or fewer beds.
 - b. This rate shall apply for qualifying providers beginning July 1, 2004. Any tax liability for tax periods beginning on or after July 1, 2004, attributable to the imposition of the levy under Section 4 of this Act or the levy imposed by 2004 Ky. Acts ch. 142, sec. 1 shall be retroactively recalculated at the rate provided in this subsection, and no penalties or interest shall apply to any outstanding amounts.
 2. At a uniform rate per non-Medicare patient day of up to two percent (2%) of the average daily revenue per patient bed applied to actual non-Medicare patient bed days by each nursing facility on or after July 1, 2004, for the provision of nursing facility services that are provided at a hospital-based nursing facilities; and
 3. At a ~~uniform~~ rate per non-Medicare patient day not to exceed six percent (6%) of the average daily revenue per patient bed applied to actual non-Medicare patient bed days by each nursing facility ~~[equal to two percent (2.0%) of gross revenues received by all nursing facilities]~~ on or after July 1, 2004. This rate shall not apply to any provider assessed under subparagraphs 1. or 2. of this paragraph ~~[, for the provision of nursing facility services].~~
 4. Notwithstanding the provisions of subparagraphs 1. to 3. of this paragraph, no provider assessment shall be levied under this subsection on a state veterans' nursing home on or after July 1, 2004.
- (d) The rates established by paragraph (c) of this subsection are maximum rates. The rates may be adjusted annually on July 1 of each year by the Department for Medicaid Services. Notification of any rate change shall be provided to the Revenue Cabinet and to taxpayers in writing at least thirty (30) days prior to the new rate going into effect.
- ~~(2)(3)~~ ~~[In addition to the assessment levied under subsection (2) of this section and the tax imposed by KRS 142.307, an additional assessment on nursing facility services shall be imposed per non-Medicare patient day not to exceed four percent (4%) of gross revenue from the provision of nursing facility services. This assessment shall be imposed on all nursing facilities except acute care based skilled nursing facilities, intermediate care facilities, or nursing facilities.] The ~~second~~ assessment imposed under subparagraph 3. of paragraph (c) of subsection (1) of this section is not required to be uniform, and the rate of assessment per non-Medicare day may be variable based upon a facility's total annual census days if deemed an acceptable waived class by the Centers for Medicare and Medicaid Services.~~
- ~~(3)(4)~~ All revenues collected pursuant to ~~subsection (1)~~ ~~subsections (2) and (3)~~ of this section shall be deposited in the Medical Assistance Revolving Trust Fund (MART) and transferred on a quarterly basis to the Department for Medicaid Services.
- ~~(4)(5)~~ The Department for Medicaid Services shall promulgate administrative regulations to ensure that a portion of the revenues generated from the assessment imposed by subsection ~~(1)~~ ~~(3)~~ of this section and federal matching funds be used to increase reimbursement rates for nursing facilities. The regulations shall, at a minimum:
- (a) Provide that the rate increases shall be used to fully phase in those providers whose current rates are less than the Medicaid price-based rates;
 - (b) Correct for inflation adjustments for the past two (2) years; and
 - (c) Re-base the rates to recognize current wage and benefit levels in the industry.

- (5)~~(6)~~ The remaining revenue generated by the assessments levied under *subsection (1)*~~subsections (2) and (3)~~ of this section and federal matching funds shall be used to supplement the medical assistance related general fund appropriations of the Department for Medicaid Services. Notwithstanding KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.
- (6)~~(7)~~ (a) On or before July 1, 2004, the Cabinet for Health and Family Services, Department for Medicaid Services shall submit an application to the Federal Centers for Medicare and Medicaid Services to request a waiver of the uniformity tax requirement pursuant to 42 C.F.R. sec. 433.68(e)(2). If an application to the Centers for Medicare and Medicaid Services for a waiver of the uniformity requirements is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved waiver.
- (b) *On or before July 1, 2005, the Cabinet for Health and Family Services, Department for Medicaid Services, shall submit an application to the Federal Centers for Medicare and Medicaid Services to amend the waiver of the uniformity tax requirement granted in 2004. If the application to Centers for Medicare and Medicaid Services for an amendment to the previously granted waiver is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved amendment to the waiver.*
- (7)~~(8)~~ Assessments imposed pursuant to this section shall begin on July 1, 2004, but are not due and payable until rates are increased as provided in subsection (5) of this section.
- (8)~~(9)~~ The provisions of this section shall be considered null and void if the uniformity waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.

Section 4. KRS 142.307 is amended to read as follows:

- (1) A tax is hereby imposed at a rate of two percent (2%) on gross revenues received by each provider on or after July 15, 1994, for the provision of ~~nursing facility services, intermediate care facility services for the mentally retarded,~~ licensed home-health-care services~~[-]~~ and HMO services.
- (2) The tax imposed by this section shall apply to freestanding psychiatric hospitals if necessary waivers are obtained by the Cabinet for Health Services from the Health Care Financing Administration. The tax imposed by this section shall not apply to gross revenues received for dispensing outpatient prescription drugs subject to tax under KRS 142.311.

Approved March 16, 2005.