

CHAPTER 83

(SB 22)

AN ACT relating to personal services and making an appropriation therefor.

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

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

As used in Sections 1 to 3 of this Act:

- (1) *"Cabinet" means the Cabinet for Health and Family Services;*
- (2) *"Client" means an individual who has been accepted to receive personal services from a personal services agency;*
- (3) *"Crime" means a conviction of or plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult or child; 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 if committed in Kentucky;*
- (4) *"Department" means a department designated by the Cabinet for Health and Family Services;*
- (5) *"Designated representative" means a person who has legal authority or is designated by the client to act on behalf of the client with regard to the action to be taken;*
- (6) *"Direct service" means personal or group interaction between the employee and the client;*
- (7) (a) *"Personal services" means:*
 1. *Assisting with a client's ambulation and activities of daily living as defined in KRS 194A.700;*
 2. *Facilitating the self-administration of medications if such medications are prepared or directed by a licensed health-care professional or the client's designated representative;*
 3. *Providing services which may be referred to as attendant care, in-home companion, sitter and respite care services, and homemaker services when provided in conjunction with other personal services; and*
 4. *Providing services that enable the client to live safely, comfortably, and independently.*
- (b) *"Personal services" excludes the following:*
 1. *Housing and services provided by a health facility or service as defined in KRS 216B.015;*
 2. *Voluntary services provided by employers or membership organizations for their employees, members, and families of the employees or members if the services are not the predominant purpose of the employer or the membership organization's business;*
 3. *House cleaning, laundry, personal shopping, or transportation provided by an entity if the entity offers no other personal services;*
 4. *Services provided by the client's family or by individuals who provide services to no more than three (3) clients concurrently;*
 5. *Individuals or entities that provide all personal services on a voluntary basis;*
 6. *Services that require the order of a licensed health-care professional to be lawfully performed in Kentucky;*
 7. *Hospitals or other entities that provide information to consumers regarding persons who are available as caregivers if the hospital or other entity makes no attempt to manage or coordinate the selection of such persons for consumers and a disclaimer is provided that the entity providing the information has not made an independent assessment of the ability of the individual or agency to provide personal services;*
 8. *Free Internet resources that identify potential caregivers; and*

9. *Any health-care entity or health-care practitioner otherwise licensed, certified, or regulated by local, state, or federal statutes or regulations;*
- (8) *"Personal services agency" means any person, business entity, corporation, or association, either for-profit or not-for-profit, that directly provides or makes provision for personal services through:*
- (a) *Its own employees or agents;*
 - (b) *Contractual arrangements with independent contractors; or*
 - (c) *Referral of persons to render personal services if the person making the referral has an ownership or financial interest that is realized from the delivery of those services.*
- (9) *"Parent personal services agency" means a personal services agency located in Kentucky that develops and maintains administrative and fiscal control over a branch office in a different Kentucky location, and does not include an out-of-state personal services agency with a branch office in Kentucky; and*
- (10) *"Secretary" means the secretary of the Cabinet for Health and Family Services.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *No personal services agency shall be operated, maintained, or advertised without obtaining a certificate as provided in this section. Entities that operate personal services agencies, as defined in Section 1 of this Act, in Kentucky on the effective date of this section shall have until December 31, 2009, to file an application for certification pursuant to this section. All other agencies shall be required to obtain certification prior to providing personal services. A parent personal services agency with one (1) or more branch offices in Kentucky shall not be required to obtain separate certificates for each of its branch offices.*
- (2) *Each personal services agency providing direct services to clients as defined in Section 1 of this Act shall perform a criminal background check on any applicant for employment prior to employing the applicant. Each application provided by the personal services agency to the applicant for initial employment shall state in a conspicuous manner on the application "For This Type of Employment State Law Requires a Criminal Background Check as Condition of Employment."*
- (3) *No personal services agency shall employ a person in a position which involves providing direct services to a client if the employee has been convicted of a crime as defined by Section 1 of this Act.*
- (4) *The secretary shall promulgate administrative regulations to implement this section and Sections 3 and 4 of this Act. The administrative regulations at a minimum shall establish:*
- (a) *An initial and annual certification review process for personal services agencies that does not require an on-site visit;*
 - (b) *Procedures related to applying for, reviewing, approving, denying, and revoking certification;*
 - (c) *Fees for application and reapplication in an amount sufficient to offset the cost to administer Sections 2 and 3 of this Act;*
 - (d) *Procedures for complaint investigations;*
 - (e) *Procedures for the imposition and collection of fines as provided by Section 3 of this Act;*
 - (f) *Policies and procedures for the personal services agencies;*
 - (g) *Procedures for criminal background checks;*
 - (h) *Procedures to ensure the competency of the individuals providing personal services, the requirements of written service agreements between the personal services agencies and clients or designated representatives, and the requirements of personal service plans for the clients; and*
 - (i) *Procedures to be utilized in the conduct of hearings upon appeals in accordance with KRS Chapter 13B.*
- (5) *Only those personal services agencies meeting the standards prescribed for certification shall be granted a certificate.*
- (6) *All fees collected under the provisions of this section shall be paid into the State Treasury and credited to the Kentucky personal services agency fund created by Section 4 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *Any personal services agency that provides services without receiving certification pursuant to Section 2 of this Act may be fined up to five hundred dollars (\$500) per day.*
- (2) *Any business that markets its services as a personal services agency without receiving certification pursuant to Section 2 of this Act may be fined up to five hundred dollars (\$500) per day.*
- (3) *All fines collected pursuant to this section shall be deposited in the fund established by Section 4 of this Act.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

- (1)
 - (a) *There is created a trust and agency fund to be known as the Kentucky personal services agency fund.*
 - (b) *The fund shall be administered by the Finance and Administration Cabinet.*
 - (c) *The fund shall be funded with moneys collected under Sections 2 and 3 of this Act.*
- (2) *Moneys in the fund shall be used by a department designated by the secretary of the Cabinet for Health and Family Services to administer Sections 2 and 3 of this Act. The amount expended to administer Sections 2 and 3 of this Act shall not exceed the amount collected under Sections 2 and 3 of this Act.*
- (3) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in subsection (2) of this section.*
- (4) *Interest earned on any moneys in the account shall accrue to the account.*
- (5) *Moneys in the fund are hereby appropriated for the purposes set forth in Sections 2 and 3 of this Act.*

Signed by the Governor March 24, 2009.