

CHAPTER 7

(HB 231)

AN ACT relating to psychiatric residential treatment facilities.

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

➔Section 1. KRS 216B.450 is amended to read as follows:

As used in this section,~~and~~ KRS 216B.455, *and Section 3 of this Act:*

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Community-based" means a facility that is located in an existing residential neighborhood or community;
- (3) "Freestanding" means a completely detached building or two (2) residences under one (1) roof that are clearly separate and can serve youth independently;
- (4) "Home-like" means a residence with living space designed to accommodate the daily living needs and tasks of a family unit, with opportunity for adult-child communication, shared tasks, adult-child learning, congregated meals, and family-type routines appropriate to the ages and levels of functioning of the residents;~~and~~
- (5) "Psychiatric residential treatment facility" means *either* a licensed:
 - (a) *Level I*~~+~~ community-based, and home-like facility with a maximum of nine (9) beds which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) years who have an emotional disability or severe emotional disability as defined in KRS 200.503, with an age range of no greater than five (5) years at the time of admission in a living unit; *or*
 - (b) *Level II home-like facility that provides twenty-four (24) hour inpatient psychiatric residential treatment and habitation to persons who:*
 1. *Are ages four (4) to twenty-one (21) years, with an age range of no greater than five (5) years at the time of admission to the facility;*
 2. *Have a severe emotional disability as defined by KRS 200.503 in addition to severe and persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or developmental disability; and*
 3. *Do not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital and whose treatment needs cannot be met in an ambulatory care setting, Level I psychiatric residential treatment facility, or other less restrictive environment;*
- (6) *"Qualified mental health personnel" means a staff member who operates under the supervision of a qualified mental health professional; and*
- (7) *"Qualified mental health professional" has the same meaning as in KRS 202A.011.*

➔Section 2. KRS 216B.455 is amended to read as follows:

- (1) A certificate of need shall be required for all *Level I* psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed *Level I* psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:
 - (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;
 - (b) Department for Community Based Services;
 - (c) Local school districts;
 - (d) At least one (1) psychiatric hospital; and
 - (e) Any other agency, organization, or facility deemed appropriate by the cabinet.

- (2) Notwithstanding provisions for granting of a nonsubstantive review of a certificate of need application under KRS 216B.095, the cabinet shall review and approve the nonsubstantive review of an application seeking to increase the number of beds as permitted by KRS 216B.450 if the application is submitted by an eight (8) bed or sixteen (16) bed **Level I** psychiatric residential treatment facility licensed and operating or holding an approved certificate of need on July 13, 2004. The cabinet shall base its approval of expanded beds upon the **Level I** psychiatric residential treatment facility's ability to meet standards designed by the cabinet to provide stability of care. The standards shall be promulgated by the cabinet in an administrative regulation in accordance with KRS Chapter 13A. An application under this subsection shall not be subject to any moratorium relating to certificate of need.
- (3) All **Level I** psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.
- (4) All **Level I** psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation *of Services for Families and Children*, or any other accrediting body with comparable standards that is recognized by the state.
- (5) A **Level I** psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital. More than one (1) freestanding **Level I** psychiatric residential treatment facility may be located on the same campus that is not in or on the grounds of a psychiatric hospital.
- (6) The total number of **Level I** psychiatric residential treatment facility beds shall not exceed three hundred and fifteen (315) beds statewide~~, and shall be distributed among the state mental hospital districts established by administrative regulations promulgated by the Cabinet for Health and Family Services under KRS 210.300 as follows:~~
- (a) ~~— District I for seventy two (72) beds;~~
 - (b) ~~— District II for ninety nine (99) beds;~~
 - (c) ~~— District III for ninety (90) beds; and~~
 - (d) ~~— District IV for fifty four (54) beds}.~~
- (7) (a) The Cabinet for Health and Family Services shall investigate the need for *specialty foster care and posttreatment services for persons discharged from*~~— children's} **Level I and Level II** psychiatric residential treatment facilities~~~~[services for specialized populations including, but not limited to, sexual offenders, children with physical and developmental disabilities, and children with dual diagnoses].~~
- (b) The cabinet shall report to the Governor and the Legislative Research Commission by August 1, 2011~~{2005}~~, *detailing information on specialty foster care and posttreatment services for persons discharged from Level I and Level II psychiatric residential treatment facilities*~~[on a plan to enable children with specialized needs to be served in community based psychiatric treatment facilities in Kentucky. The plan shall include methods to:~~
- 1. ~~— Identify the specialized populations;~~
 - 2. ~~— Develop services targeted for the specialized populations; and~~
 - 3. ~~— Establish a Medicaid reimbursement rate for specialized facilities in Kentucky].~~

➔SECTION 3. A NEW SECTION OF KRS 216B.450 TO 216B.459 IS CREATED TO READ AS FOLLOWS:

- (1) *A certificate of need shall be required for all Level II psychiatric residential treatment facilities. The need criteria for the establishment of Level II psychiatric residential treatment facilities shall be in the state health plan.*
- (2) *An application for a certificate of need for Level II psychiatric residential treatment facilities shall not exceed fifty (50) beds. Level II facility beds may be located in a separate part of a psychiatric hospital, a separate part of an acute care hospital, or a Level I psychiatric residential treatment facility if the Level II beds are located on a separate floor, in a separate wing, or in a separate building. A Level II facility shall not refuse to admit a patient who meets the medical necessity criteria and facility criteria for Level II facility services. Nothing in this section, and Sections 1 and 2 of this Act shall be interpreted to prevent a psychiatric residential treatment facility from operating both a Level I psychiatric residential treatment facility and a Level II psychiatric residential treatment facility.*

- (3) *The application for a Level II psychiatric residential treatment facility certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed Level II psychiatric residential treatment facility and each of the following agencies, organizations, or entities located in the service area of the proposed facility:*
- (a) *Regional interagency council for children with emotional disability or severe emotional disability created under KRS 200.509;*
 - (b) *Community mental health-mental retardation board established under KRS 210.380;*
 - (c) *Department for Community Based Services;*
 - (d) *Local school districts;*
 - (e) *At least one (1) psychiatric hospital; and*
 - (f) *Any other agency, organization, or entity deemed appropriate by the cabinet.*
- (4) *The application for a certificate of need shall include:*
- (a) *The specific number of beds proposed for each age group and the specific, specialized program to be offered;*
 - (b) *An inventory of current services in the proposed service area; and*
 - (c) *Clear admission and discharge criteria including age, sex, and other limitations.*
- (5) *All Level II psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.*
- (6) *All Level II psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards that are recognized by the Centers for Medicare and Medicaid Services.*
- (7) *A Level II psychiatric residential treatment facility shall be under the clinical supervision of a qualified mental health professional, with training or experience in mental health treatment of children and youth.*
- (8) *Treatment services shall be provided by qualified mental health professionals or qualified mental health personnel. Individual staff who will provide educational programs shall meet the employment standards outlined by the Kentucky Board of Education and the Education Professional Standards Board.*
- (9) *A Level II psychiatric residential treatment facility shall meet the following requirements with regard to professional staff:*
- (a) *A licensed psychiatrist, who is board-eligible or board-certified as a child or adult psychiatrist, shall be employed or contracted to meet the treatment needs of the residents and the functions that shall be performed by a psychiatrist;*
 - (b) *If a Level II psychiatric residential treatment facility has residents ages twelve (12) and under, the licensed psychiatrist shall be a board-eligible or board-certified child psychiatrist; and*
 - (c) *The licensed psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly.*
- (10) *A Level II psychiatric residential treatment facility shall:*
- (a) *Prepare a written staffing plan that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria. The written staffing plan shall include but not be limited to the following:*
 - 1. *Specification of the direct care staffing per patient ratio that the facility shall adhere to during waking hours and during sleeping hours;*
 - 2. *Delineation of the number of direct care staff per patient, including the types of staff and the mix and qualifications of qualified mental health professionals and qualified mental health personnel, that shall provide direct care and will comprise the facility's per patient staffing ratio;*

3. *Specification of appropriate qualifications for individuals included in the per patient staffing ratio by job description, education, training, and experience;*
4. *Provision for ensuring compliance with its written staffing plan, and specification of the circumstances under which the facility may deviate from the per patient staffing ratio due to patient emergencies, changes in patient acuity, or changes in patient census; and*
5. *Provision for submission of the written staffing plan to the cabinet for approval as part of the facility's application for initial licensure.*

No initial license to operate as a Level II psychiatric residential treatment facility shall be granted until the cabinet has approved the facility's written staffing plan. Once a facility is licensed, it shall comply with its approved written staffing plan and, if the facility desires to change its approved per patient staffing ratio, it shall submit a revised plan and have the plan approved by the cabinet prior to implementation of the change;

- (b) *Require full-time professional and direct care staff to meet the continuing education requirements of their profession or be provided with forty (40) hours per year of in-service training; and*
 - (c) *Develop and implement a training plan for all staff that includes but is not limited to the following:*
 1. *Behavior management procedures and techniques;*
 2. *Physical management procedures and techniques;*
 3. *First aid;*
 4. *Cardiopulmonary resuscitation;*
 5. *Infection control procedures;*
 6. *Child and adolescent growth and development;*
 7. *Training specific to the specialized nature of the facility;*
 8. *Emergency and safety procedures; and*
 9. *Detection and reporting of child abuse and neglect.*
- (11) *A Level II psychiatric residential treatment facility shall require a criminal records check to be completed on all employees and volunteers. The employment or volunteer services of an individual shall be governed by KRS 17.165, with regard to a criminal records check. A new criminal records check shall be completed at least every two (2) years on each employee or volunteer.*
- (12) (a) *Any employee or volunteer who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.*
- (b) *An employee or volunteer under indictment, legally charged with felonious conduct, or subject to a cabinet investigation shall be immediately removed from contact with a child.*
- (c) *The employee or volunteer shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.*
- (d) *Each employee or volunteer shall submit to a check of the central registry. An individual listed on the central registry shall not be a volunteer at or be employed by a Level II psychiatric residential treatment facility.*
- (e) *Any employee or volunteer removed from contact with a child, pursuant to paragraph (12) of this section, may, at the discretion of the employer, be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.*
- (13) *An initial treatment plan of care shall be developed and implemented for each resident, and the plan of care shall be based on initial history and ongoing assessment of the resident's needs and strengths, with an*

emphasis on active treatment, transition planning, and after care services, and shall be completed within seventy-two (72) hours of admission.

- (14) *A comprehensive treatment plan of care shall be developed and implemented for each resident, and the plan of care shall be based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services, and shall be completed within ten (10) calendar days of admission.*
- (15) *A review of the treatment plan of care shall occur at least every thirty (30) days following the first ten (10) days of treatment and shall include the following documentation:*
 - (a) *Dated signatures of appropriate staff, parent, guardian, legal custodian or conservator;*
 - (b) *An assessment of progress toward each treatment goal and objective with revisions as indicated; and*
 - (c) *A statement of justification for the level of services needed, including suitability for treatment in a less-restrictive environment and continued services.*
- (16) *A Level II psychiatric residential treatment facility shall provide or arrange for the provision of qualified dental, medical, nursing, and pharmaceutical care for residents. The resident's parent, guardian, legal custodian, or conservator may choose a professional for nonemergency services.*
- (17) *A Level II psychiatric residential treatment facility shall ensure that opportunities are provided for recreational activities that are appropriate and adapted to the needs, interests, and ages of the residents.*
- (18) *A Level II psychiatric residential treatment facility shall assist residents in the independent exercise of health, hygiene, and grooming practices.*
- (19) *A Level II psychiatric residential treatment facility shall assist each resident in securing an adequate allowance of personally owned, individualized, clean, and seasonal clothes that are the correct size.*
- (20) *A Level II psychiatric residential treatment facility shall assist, educate, and encourage each resident in the use of dental, physical, or prosthetic appliances or devices and visual or hearing aids.*
- (21) *The cabinet shall promulgate administrative regulations that include but are not limited to the following:*
 - (a) *Establishing requirements for tuberculosis skin testing for staff of a Level II psychiatric residential treatment facility;*
 - (b) *Ensuring that accurate, timely, and complete resident assessments are conducted for each resident of a Level II psychiatric residential treatment facility;*
 - (c) *Ensuring that accurate, timely, and complete documentation of the implementation of a resident's treatment plan of care occurs for each resident of a Level II psychiatric residential treatment facility;*
 - (d) *Ensuring that an accurate, timely, and complete individual record is maintained for each resident of a Level II psychiatric residential treatment facility;*
 - (e) *Ensuring that an accurate, timely, and complete physical examination is conducted for each resident of a Level II psychiatric residential treatment facility;*
 - (f) *Ensuring accurate, timely, and complete access to emergency services is available for each resident of a Level II psychiatric residential treatment facility; and*
 - (g) *Ensuring that there is accurate, timely, and complete administration of medications for each resident of a Level II psychiatric residential treatment facility.*
- (22) *The cabinet shall, within ninety (90) days of the effective date of this Act, promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and Sections 1 and 2 of this Act. When promulgating the administrative regulations, the cabinet shall not consider only staffing ratios when evaluating the written staffing plan of an applicant but shall consider the applicant's overall ability to provide for the needs of patients.*
- (23) *The cabinet shall report, no later than August 1 of each year, to the Interim Joint Committee on Health and Welfare regarding the implementation of this section and Sections 1 and 2 of this Act. The report shall include but not be limited to information relating to resident outcomes, such as lengths of stay in the*

facility, locations residents were discharged to, and whether residents were readmitted to a Level II psychiatric residential treatment facility within a twelve (12) month period.

Signed by Governor March 4, 2010.