

## CHAPTER 36

## (HB 444)

AN ACT relating to assisted-living communities.

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

➔Section 1. KRS 194A.700 is amended to read as follows:

As used in KRS 194A.700 to 194A.729:

- (1) "Activities of daily living" means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;
- (2) *"Assistance with activities of daily living and instrumental activities of daily living" means any assistance provided by the assisted-living community staff with the client having at least minimal ability to verbally direct or physically participate in the activity with which assistance is being provided;*
- (3) "Assistance with self-administration of medication," *unless subject to more restrictive provisions in an assisted-living community's policies that are communicated in writing to clients and prospective clients,* means:
  - (a) *Assistance with medication that is prepared or directed by the client, the client's designated representative, or a licensed health care professional who is not the owner, manager, or employee of the assisted-living community. The medication shall:*
    1. *Except for ointments, be preset in a medication organizer or be in a single dose unit;*
    2. *Include the client's name on the medication organizer or container in which the single dose unit is stored; and*
    3. *Be stored in a manner requested in writing by the client or the client's designated representative and permitted by the assisted-living community's policies;*
  - (b) *Assistance by an assisted-living community staff person, which includes:*
    1. *Reminding a client when to take medications and observing to ensure that the client takes the medication as directed;*
    2. *Handing the client's medication to the client, or if it is difficult for the client or the client requests assistance, opening the unit dose or medication organizer, removing the medication from a medication organizer or unit dose container, closing the medication organizer for the client, placing the dose in a container, and placing the medication or the container in the client's hand;*
    3. *Steadying or guiding a client's hand while the client is self-administering medications; or*
    4. *Applying over-the-counter topical ointments and lotions;*
  - (c) *Making available the means of communication by telephone, facsimile, or other electronic device with a licensed health care professional and pharmacy regarding a prescription for medication;*
  - (d) *At the request of the client or the client's designated representative, facilitating the filling of a preset medication container by a designated representative or licensed health care professional who is not the owner, manager, or employee of the assisted living community; and*
  - (e) *None of the following:*
    1. *Instilling eye, ear, or nasal drops;*
    2. *Mixing compounding, converting, or calculating medication doses;*
    3. *Preparing syringes for injection or administering medications by any injection method;*
    4. *Administering medications through intermittent positive pressure breathing machines or a nebulizer;*
    5. *Administering medications by way of a tube inserted in a cavity of the body;*

6. *Administering parenteral preparations;*
  7. *Administering irrigations or debriding agents used in the treatment of a skin condition; or*
  8. *Administering rectal, urethral, or vaginal preparations*~~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;~~
- (4)~~(3)~~ "Assisted-living community" means a series of living units on the same site~~, operated as one (1) business entity, and~~ certified under KRS 194A.707 to provide services for five (5) or more adult persons not related within the third degree of consanguinity to the owner or manager;
- (5)~~(4)~~ "Client," "*resident*," or "*tenant*" means an adult person who has entered into a lease agreement with an assisted-living community;
- (6)~~(5)~~ "Danger" means physical harm or threat of physical harm to one's self or others;
- (7) "*Department*" means the *Department for Aging and Independent Living*;
- (8)~~(6)~~ "Health services" has the same meaning as in KRS 216B.015;
- (9)~~(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;
- (10)~~(8)~~ "Living unit" means a portion of an assisted-living community occupied as the living quarters of a client under a lease agreement;
- (11)~~(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~~
- (12) "*Plan of correction*" means a written response from the assisted-living community addressing an instance cited in the statement of noncompliance;
- (13) "*Statement of danger*" means a written statement issued by the department detailing an instance where a client is a danger; and
- (14) "*Statement of noncompliance*" means a written statement issued by the department detailing an instance when the department considers the assisted-living community to have been in violation of a statutory or regulatory requirement~~(10) "Department" means the Department for Aging and Independent Living.~~
- ➔Section 2. KRS 194A.703 is amended 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 eighty-one (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 *as determined by the building code or life safety code enforcement authority with jurisdiction.*

➔Section 3. KRS 194A.705 is amended to read as follows:

- (1) The assisted-living community shall provide each client with *access to* 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) *A client issued a move-out notice shall receive the notice in writing and the* ~~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 department regarding options for alternative living arrangements at the time a move-out notice is given to the client.
- (5) *An assisted-living community shall complete and provide to the client:*
- (a) *Upon move-in, a copy of a functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living; and*
  - (b) *After move-in, a copy of an updated functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living.*

➔Section 4. KRS 194A.707 is amended to read as follows:

- (1) The Cabinet for Health and Family 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) *An on-site visit of an assisted-living community shall be conducted by the cabinet:*
- (a) *As part of the initial certification review process;*
  - (b) *On a biennial basis as part of the certification review process if during or since the previous certification review an assisted-living community has not received:*
    1. *Any statement of danger, unless withdrawn by the cabinet; or*
    2. *A finding substantiated by the cabinet that the assisted-living community delivered a health service; and*
  - (c) *Within one (1) year of the date of the previous certification review if during or since the last certification review an assisted-living community has received:*
    1. *Any statement of danger that was not withdrawn by the cabinet; or*
    2. *A finding substantiated by the cabinet that the assisted-living community delivered a health service.*
- (3) No ~~business~~ ~~assisted-living community~~ shall *market its service as an assisted-living community unless it* ~~operate unless its owner or manager~~ has:
- (a) Filed a current application for the ~~business~~ ~~assisted-living community~~ to be certified by the department *as an assisted-living community*; or

- (b) Received certification *by the department as an*~~[of the]~~ assisted-living community~~[from the department]~~.
- (4) *No business that has been denied or had its certification revoked shall operate or market its service as an assisted-living community unless it has:*
- (a) *Filed a current application for the business to be certified by the department as an assisted-living community; and*
- (b) *Received certification as an assisted-living community from the department. Revocation of certification may be grounds for the department to not reissue certification for one (1) year if ownership remains substantially the same.*
- (5)~~(3)~~ No business shall *operate*~~[market its services]~~ as an assisted-living community unless its owner or manager has:
- (a) Filed a current application for the *business*~~[assisted-living community]~~ to be certified *as an assisted-living community* by the department; ~~and for~~
- (b) Received certification *as an*~~[of the]~~ assisted-living community from the department.
- (6)~~(4)~~ The department shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the department.
- (7)~~(5)~~ Individuals designated by the department to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.
- (8)~~(6)~~ Upon *receipt of an application for certification*~~[conducting a certification review]~~, the department 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 department 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.
- (9) *The department shall submit to the Legislative Research Commission and make available to any interested person at no charge, by June 30 of each year, in summary format, all findings from certification reviews conducted during the prior twelve (12) months.*
- (10)~~(7)~~ Notwithstanding any provision of law to the contrary, the department may request any additional information from an assisted-living community or conduct additional on-site visits to ensure compliance with the provisions of KRS 194A.700 to 194A.729.
- (11) *Failure to follow an assisted-living community's policies, practices, and procedures shall not result in a finding of noncompliance unless the assisted-living community is out of compliance with a related requirement under KRS 194A.700 to 194A.729.*

➔Section 5. KRS 194A.709 is amended to read as follows:

- (1) The department shall report to the Division of Health Care Facilities and Services 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. *The only requisite components of a recordkeeping policy are the date and time of the report, the reporting method, and a brief summary of the alleged incident.*
- (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. KRS 194A.711 is amended 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 KRS 194A.705(2) and (3)]~~; and
- (2) Not be a danger.

➔Section 7. KRS 194A.713 is amended 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 **but not be limited to**:

- (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;
  - ~~(b)~~~~(c)~~ Name of responsible party or legal guardian, if applicable;
  - ~~(c)~~~~(d)~~ Attending physician's name;
  - ~~(d)~~~~(e)~~ Information regarding personal preferences and social factors; **and**
  - ~~(e)~~~~(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 KRS 194A.705(2) and (3); 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. KRS 194A.715 is amended to read as follows:

- (1) An assisted-living community shall provide any interested person with a **copy of KRS 194A.700 to 194A.729 and relevant administrative regulations**~~;~~
  - ~~(a) — Consumer publication, as approved by the department, that contains a thorough description of Kentucky laws and regulations governing assisted living communities;~~
  - ~~(b) — Standard consumer checklist provided by the department; 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 department.~~

➔Section 9. KRS 194A.717 is amended 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 *each client pursuant to the lease agreement and functional needs assessment*~~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. KRS 194A.719 is amended to read as follows:

- (1) 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:
  - (a)~~(1)~~ Client rights;
  - (b)~~(2)~~ Community policies;
  - (c)~~(3)~~ Adult first aid;
  - (d)~~(4)~~ Cardiopulmonary resuscitation *unless the policies of the assisted-living community state that this procedure is not initiated by its staff, and that clients and prospective clients are informed of the policies*;
  - (e)~~(5)~~ Adult abuse and neglect;
  - (f)~~(6)~~ Alzheimer's disease and other types of dementia;
  - (g)~~(7)~~ Emergency procedures;
  - (h)~~(8)~~ Aging process;
  - (i)~~(9)~~ Assistance with activities of daily living and instrumental activities of daily living;
  - (j)~~(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
  - (k)~~(11)~~ Assistance with self-administration of medication.
- (2) *Assisted-living community staff and management shall receive annual in-service education applicable to their assigned duties that addresses no fewer than four (4) of the topics listed in subsection (1) of this section.*

➔Section 11. KRS 194A.723 is amended to read as follows:

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

➔SECTION 12. A NEW SECTION OF KRS 194A.700 TO 194A.729 IS CREATED TO READ AS FOLLOWS:

*An assisted-living community that is issued more than two (2) statements of danger on separate dates within a six (6) month period that are not withdrawn by the department may be fined up to five hundred dollars (\$500).*

Signed by Governor March 30, 2010.