

1 AN ACT relating to long-term care facilities.

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

3 ➔Section 1. KRS 216.535 is amended to read as follows:

4 (1) As used in KRS 216.537 to 216.590:

5 (a) "Long-term care facilities" means those health care facilities in the
6 Commonwealth which are defined by the Cabinet for Health and Family
7 Services to be family care homes, personal care homes, intermediate care
8 facilities, nursing facilities, nursing homes, and intermediate care facilities for
9 individuals with intellectual disabilities;

10 (b) "Cabinet" means the Cabinet for Health and Family Services;

11 (c) "Resident" means any person admitted to a long-term care facility as defined
12 by this section;

13 (d) "Licensee" in the case of a licensee who is an individual means the individual,
14 and in the case of a licensee who is a corporation, partnership, or association
15 means the corporation, partnership, or association;

16 (e) **"Management or consulting company" means an individual, partnership,**
17 **firm, association, or other entity that contracts with, or receives a fee from,**
18 **a licensee to provide any of the following services for a long-term care**
19 **facility:**

20 **1. Hiring or firing of the licensee's long-term care facility administrator**
21 **director of nursing;**

22 **2. Scheduling staff and staffing levels of the licensee's long-term care**
23 **facility;**

24 **3. Setting the budget of the licensee's long-term care facility; or**

25 **4. Implementing and enforcing the policies and procedures of the**
26 **licensee's long-term care facility;**

27 (f) **"Passive investor" means an individual, partnership, firm, association, or**

1 *other entity that has an ownership interest in a licensee's long-term care*
 2 *facility but does not make decisions concerning the management of the day-*
 3 *to-day operations of a licensee's long-term care facility;*

4 (g) "Secretary" means the secretary of the Cabinet for Health and Family
 5 Services;

6 (h)~~(f)~~ "Long-term care ombudsman" means the person responsible for the
 7 operation of a long-term care ombudsman program which investigates and
 8 resolves complaints made by or on behalf of residents of long-term care
 9 facilities; and

10 (i)~~(g)~~ "Willful interference" means an intentional, knowing, or purposeful act
 11 or omission which hinders or impedes the lawful performance of the duties
 12 and responsibilities of the ombudsman as set forth in this chapter.

13 (2) The following information shall be available upon request of the affected Medicaid
 14 recipient or responsible party:

15 (a) Business names, business addresses, and business telephone numbers of
 16 operators and administrators of the facility; and

17 (b) Business names, business addresses, and business telephone numbers of staff
 18 physicians and the directors of nursing.

19 (3) The following information shall be provided to the nursing facility patient upon
 20 admission:

21 (a) Admission and discharge policies of the facility;

22 (b) Payment policies relevant to patients for all payor types; and

23 (c) Information developed and distributed to the nursing facility by the
 24 Department for Medicaid Services, including but not limited to:

25 1. Procedures for implementation of all peer review organizations' reviews
 26 and appeals processes;

27 2. Eligibility criteria for the state's Medical Assistance Program, including

1 circumstances when eligibility may be denied; and

2 3. Names and telephone numbers for case managers and all state long term
3 care ombudsmen.

4 ➔SECTION 2. A NEW SECTION OF KRS 216.537 TO 216.590 IS CREATED
5 TO READ AS FOLLOWS:

6 (1) Any cause of action alleging a violation of a resident's rights as specified in KRS
7 Chapter 216 or direct or vicarious liability for the personal injury or death of a
8 resident, and which seeks damages for such injury or death, shall only be
9 brought against the licensee of a long-term care facility, the licensee's
10 management or consulting company, or the licensee's management, direct or
11 independent contractors, or employees. A passive investor is not liable under this
12 subsection. An action against any other individual, partnership, firm, association,
13 or other entity shall be brought only pursuant to subsection (2) of this section.

14 (2) A cause of action alleging a violation of a resident's rights or liability for the
15 personal injury or death of a resident shall not be asserted against a passive
16 investor, any other individual, partnership, firm, association, or other entity,
17 other than the licensee of a long-term care facility, the licensee's management or
18 consulting company, or the licensee's management, direct or independent
19 contractors, or employees unless a court or arbitrator determines there is
20 sufficient evidence in the record or offered by the plaintiff resident to establish a
21 reasonable showing that:

22 (a) A passive investor, any other individual, partnership, firm, association, or
23 other entity owed a duty of reasonable care to the plaintiff resident wholly
24 independent of the licensee of a long-term care facility's duty to the plaintiff
25 resident, and that the passive investor, any other individual, partnership,
26 firm, association, or other entity breached that duty; and

27 (b) A passive investor, any other individual, partnership, firm, association, or

1 *other entity's breach of duty is a legal cause of the plaintiff resident's loss,*
2 *injury, death, or damage to the plaintiff resident wholly independent of the*
3 *licensee of a long-term care facility's duty to the plaintiff resident.*