

1 AN ACT relating to licensure by the Cabinet for Health and Family Services.

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

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

5 *(1) A civil money penalty that is imposed, collected, and returned by the Centers for*
6 *Medicare and Medicaid Services to the Commonwealth in accordance with 42*
7 *C.F.R. sec. 488.430 to 488.446 to support activities that benefit residents of long-*
8 *term care facilities certified under Title XVIII or XIX of the Social Security Act*
9 *shall be maintained in the Kentucky certified long-term care facility civil money*
10 *penalty fund that is administered by the Cabinet for Health and Family Services.*

11 *(2) Moneys in the fund shall be used in accordance with 42 C.F.R. sec. 488.433.*

12 *(3) Interest earned on any moneys in the fund shall accrue to the fund and shall be*
13 *used by the Cabinet for Health and Family Services to administer KRS Chapters*
14 *216 and 216B.*

15 ➔Section 2. KRS 205.510 (Effective until July 1, 2019) is amended to read as
16 follows:

17 As used in this chapter as it pertains to medical assistance unless the context clearly
18 requires a different meaning:

19 (1) "Chiropractor" means a person authorized to practice chiropractic under KRS
20 Chapter 312;

21 (2) "Council" means the Advisory Council for Medical Assistance;

22 (3) "Dentist" means a person authorized to practice dentistry under laws of the
23 Commonwealth;

24 (4) "Health professional" means a physician, physician assistant, nurse, doctor of
25 chiropractic, mental health professional, optometrist, dentist, or allied health
26 professional who is licensed in Kentucky;

27 (5) "Medical care" as used in this chapter means essential medical, surgical,

1 chiropractic, dental, optometric, podiatric, telehealth, and nursing services, in the
 2 home, office, clinic, or other suitable places, which are provided or prescribed by
 3 physicians, optometrists, podiatrists, or dentists licensed to render such services,
 4 including drugs and medical supplies, appliances, laboratory, diagnostic and
 5 therapeutic services, nursing-home and convalescent care, hospital care as defined
 6 in KRS 205.560(1)(a), and such other essential medical services and supplies as
 7 may be prescribed by such persons; but not including abortions, or induced
 8 miscarriages or premature births, unless in the opinion of a physician such
 9 procedures are necessary for the preservation of the life of the woman seeking such
 10 treatment or except in induced premature birth intended to produce a live viable
 11 child and such procedure is necessary for the health of the mother or her unborn
 12 child. However, this section does not authorize optometrists to perform any services
 13 other than those authorized by KRS Chapter 320;

14 (6) "Nurse" means a person authorized to practice professional nursing under the laws
 15 of the Commonwealth;

16 (7) "Nursing home" means a facility *that:*

17 (a) Provides routine medical care including regular physician visits to patients;

18 (b) Provides nursing services and procedures employed in caring for the sick
 19 that require training, judgment, technical knowledge, and skills beyond
 20 those possessed by the untrained person;

21 (c) Maintains complete records on patient care; and

22 (d) Is licensed under KRS Chapter 216B~~[which provides routine medical care in~~
 23 ~~which physicians regularly visit patients, which provide nursing services and~~
 24 ~~procedures employed in caring for the sick which require training, judgment,~~
 25 ~~technical knowledge, and skills beyond that which the untrained person~~
 26 ~~possesses, and which maintains complete records on patient care, and which is~~
 27 ~~licensed pursuant to the provisions of KRS 216B.015];~~

- 1 (8) "Optometrist" means a person authorized to practice optometry under the laws of
2 the Commonwealth;
- 3 (9) "Other persons eligible for medical assistance" may include the categorically needy
4 excluded from money payment status by state requirements and classifications of
5 medically needy individuals as permitted by federal laws and regulations and as
6 prescribed by administrative regulation of the secretary for health and family
7 services or his designee;
- 8 (10) "Pharmacist" means a person authorized to practice pharmacy under the laws of the
9 Commonwealth;
- 10 (11) "Physician" means a person authorized to practice medicine or osteopathy under the
11 laws of the Commonwealth;
- 12 (12) "Podiatrist" means a person authorized to practice podiatry under the laws of the
13 Commonwealth;
- 14 (13) ~~["Primary care center" means a facility which provides comprehensive medical care
15 with emphasis on the prevention of disease and the maintenance of the patients'
16 health as opposed to the treatment of disease;~~
- 17 ~~(14)~~ "Public assistance recipient" means a person who has been certified by the
18 Department for Community Based Services of the Cabinet for Health and Family
19 Services as being eligible for, and a recipient of, public assistance under the
20 provisions of this chapter;
- 21 (14)~~(15)~~ "Telehealth consultation" means a medical or health consultation, for purposes
22 of patient diagnosis or treatment, that requires the use of advanced
23 telecommunications technology, including, but not limited to:
- 24 (a) Compressed digital interactive video, audio, or data transmission;
- 25 (b) Clinical data transmission via computer imaging for teleradiology or
26 telepathology; and
- 27 (c) Other technology that facilitates access to health care services or medical

1 specialty expertise;

2 ~~(15)~~~~(16)~~ "Third party" means an individual, institution, corporation, company,
3 insurance company, personal representative, administrator, executor, trustee, or
4 public or private agency, including, but not limited to, a reparation obligor and the
5 assigned claims bureau under the Motor Vehicle Reparations Act, Subtitle 39 of
6 KRS Chapter 304, who is or may be liable to pay all or part of the medical cost of
7 injury, disease, or disability of an applicant or recipient of medical assistance
8 provided under Title XIX of the Social Security Act, 42 U.S.C. sec. 1396 et seq.;

9 and
10 ~~(16)~~~~(17)~~ "Vendor payment" means a payment for medical care ~~that~~~~which~~ is paid by
11 the Cabinet for Health and Family Services directly to the authorized person or
12 institution ~~that~~~~which~~ rendered medical care to an eligible recipient.

13 ➔Section 3. KRS 205.510 (Effective July 1, 2019) is amended to read as follows:
14 As used in this chapter as it pertains to medical assistance unless the context clearly
15 requires a different meaning:

- 16 (1) "Chiropractor" means a person authorized to practice chiropractic under KRS
17 Chapter 312;
- 18 (2) "Council" means the Advisory Council for Medical Assistance;
- 19 (3) "Dentist" means a person authorized to practice dentistry under laws of the
20 Commonwealth;
- 21 (4) "Health professional" means a physician, physician assistant, nurse, doctor of
22 chiropractic, mental health professional, optometrist, dentist, or allied health
23 professional who is licensed in Kentucky;
- 24 (5) "Medical care" as used in this chapter means essential medical, surgical,
25 chiropractic, dental, optometric, podiatric, telehealth, and nursing services, in the
26 home, office, clinic, or other suitable places, which are provided or prescribed by
27 physicians, optometrists, podiatrists, or dentists licensed to render such services,

1 including drugs and medical supplies, appliances, laboratory, diagnostic and
2 therapeutic services, nursing-home and convalescent care, hospital care as defined
3 in KRS 205.560(1)(a), and such other essential medical services and supplies as
4 may be prescribed by such persons; but not including abortions, or induced
5 miscarriages or premature births, unless in the opinion of a physician such
6 procedures are necessary for the preservation of the life of the woman seeking such
7 treatment or except in induced premature birth intended to produce a live viable
8 child and such procedure is necessary for the health of the mother or her unborn
9 child. However, this section does not authorize optometrists to perform any services
10 other than those authorized by KRS Chapter 320;

11 (6) "Nurse" means a person authorized to practice professional nursing under the laws
12 of the Commonwealth;

13 (7) "Nursing home" means a facility *that:*

14 *(a) Provides routine medical care including regular physician visits to patients;*

15 *(b) Provides nursing services and procedures employed in caring for the sick*
16 *that require training, judgment, technical knowledge, and skills beyond*
17 *those possessed by the untrained person;*

18 *(c) Maintains complete records on patient care; and*

19 *(d) Is licensed under KRS Chapter 216B*~~[which provides routine medical care in~~
20 ~~which physicians regularly visit patients, which provide nursing services and~~
21 ~~procedures employed in caring for the sick which require training, judgment,~~
22 ~~technical knowledge, and skills beyond that which the untrained person~~
23 ~~possesses, and which maintains complete records on patient care, and which is~~
24 ~~licensed pursuant to the provisions of KRS 216B.015];~~

25 (8) "Optometrist" means a person authorized to practice optometry under the laws of
26 the Commonwealth;

27 (9) "Other persons eligible for medical assistance" may include the categorically needy

1 excluded from money payment status by state requirements and classifications of
2 medically needy individuals as permitted by federal laws and regulations and as
3 prescribed by administrative regulation of the secretary for health and family
4 services or his designee;

5 (10) "Pharmacist" means a person authorized to practice pharmacy under the laws of the
6 Commonwealth;

7 (11) "Physician" means a person authorized to practice medicine or osteopathy under the
8 laws of the Commonwealth;

9 (12) "Podiatrist" means a person authorized to practice podiatry under the laws of the
10 Commonwealth;

11 ~~(13) ["Primary care center" means a facility which provides comprehensive medical care~~
12 ~~with emphasis on the prevention of disease and the maintenance of the patients'~~
13 ~~health as opposed to the treatment of disease;~~

14 ~~(14)~~ "Public assistance recipient" means a person who has been certified by the
15 Department for Community Based Services of the Cabinet for Health and Family
16 Services as being eligible for, and a recipient of, public assistance under the
17 provisions of this chapter;

18 ~~(14)~~(14) "Telehealth":

19 (a) Means the delivery of health care-related services by a Medicaid provider who
20 is a health care provider licensed in Kentucky to a Medicaid recipient through
21 a face-to-face encounter with access to real-time interactive audio and video
22 technology or store and forward services that are provided via asynchronous
23 technologies as the standard practice of care where images are sent to a
24 specialist for evaluation. The requirement for a face-to-face encounter shall be
25 satisfied with the use of asynchronous telecommunications technologies in
26 which the health care provider has access to the Medicaid recipient's medical
27 history prior to the telehealth encounter;

1 (b) Shall not include the delivery of services through electronic mail, text chat,
2 facsimile, or standard audio-only telephone call; and

3 (c) Shall be delivered over a secure communications connection that complies
4 with the federal Health Insurance Portability and Accountability Act of 1996,
5 42 U.S.C. secs. 1320d to 1320d-9;

6 ~~(15)~~~~(16)~~ "Telehealth consultation" means a medical or health consultation, for purposes
7 of patient diagnosis or treatment, that meets the definition of telehealth in this
8 section;

9 ~~(16)~~~~(17)~~ "Third party" means an individual, institution, corporation, company,
10 insurance company, personal representative, administrator, executor, trustee, or
11 public or private agency, including, but not limited to, a reparation obligor and the
12 assigned claims bureau under the Motor Vehicle Repairs Act, Subtitle 39 of
13 KRS Chapter 304, who is or may be liable to pay all or part of the medical cost of
14 injury, disease, or disability of an applicant or recipient of medical assistance
15 provided under Title XIX of the Social Security Act, 42 U.S.C. sec. 1396 et seq.;

16 and

17 ~~(17)~~~~(18)~~ "Vendor payment" means a payment for medical care ~~that~~~~which~~ is paid by
18 the Cabinet for Health and Family Services directly to the authorized person or
19 institution ~~that~~~~which~~ rendered medical care to an eligible recipient.

20 ➔Section 4. KRS 216.515 is amended to read as follows:

21 ~~(1)~~ Every resident in a long-term~~[-]~~care facility **that is certified under Title XVIII or**
22 **XIX of the Social Security Act** shall **be afforded the same rights as established by**
23 **42 C.F.R. secs. 483.10 and 483.12.**

24 ~~(2)~~ **The cabinet shall promulgate administrative regulations to establish the rights of**
25 **residents in non-certified long-term care facilities**~~have at least the following~~
26 ~~rights:~~

27 ~~(1) Before admission to a long-term care facility, the resident and the responsible party~~

1 ~~or his responsible family member or his guardian shall be fully informed in writing,~~
2 ~~as evidenced by the resident's written acknowledgment and that of the responsible~~
3 ~~party or his responsible family member or his guardian, of all services available at~~
4 ~~the long term care facility. Every long term care facility shall keep the original~~
5 ~~document of each written acknowledgment in the resident's personal file.~~

6 ~~(2) Before admission to a long term care facility, the resident and the responsible party~~
7 ~~or his responsible family member or his guardian shall be fully informed in writing,~~
8 ~~as evidenced by the resident's written acknowledgment and that of the responsible~~
9 ~~party or his responsible family member or his guardian, of all resident's~~
10 ~~responsibilities and rights as defined in this section and KRS 216.520 to 216.530.~~
11 ~~Every long term care facility shall keep the original document of each written~~
12 ~~acknowledgment in the resident's personal file.~~

13 ~~(3) The resident and the responsible party or his responsible family member or his~~
14 ~~guardian shall be fully informed in writing, as evidenced by the resident's written~~
15 ~~acknowledgment and that of the responsible party or his responsible family~~
16 ~~member, or his guardian, prior to or at the time of admission and quarterly during~~
17 ~~the resident's stay at the facility, of all service charges for which the resident or his~~
18 ~~responsible family member or his guardian is responsible for paying. The resident~~
19 ~~and the responsible party or his responsible family member or his guardian shall~~
20 ~~have the right to file complaints concerning charges which they deem unjustified to~~
21 ~~appropriate local and state consumer protection agencies. Every long term care~~
22 ~~facility shall keep the original document of each written acknowledgment in the~~
23 ~~resident's personal file.~~

24 ~~(4) The resident shall be transferred or discharged only for medical reasons, or his own~~
25 ~~welfare, or that of the other residents, or for nonpayment, except where prohibited~~
26 ~~by law or administrative regulation. Reasonable notice of such action shall be given~~
27 ~~to the resident and the responsible party or his responsible family member or his~~

1 guardian.

2 ~~(5) All residents shall be encouraged and assisted throughout their periods of stay in~~
3 ~~long term care facilities to exercise their rights as a resident and a citizen, and to~~
4 ~~this end may voice grievances and recommend changes in policies and services to~~
5 ~~facility staff and to outside representatives of their choice, free from restraint,~~
6 ~~interference, coercion, discrimination, or reprisal.~~

7 ~~(6) All residents shall be free from mental and physical abuse, and free from chemical~~
8 ~~and physical restraints except in emergencies or except as thoroughly justified in~~
9 ~~writing by a physician for a specified and limited period of time and documented in~~
10 ~~the resident's medical record.~~

11 ~~(7) All residents shall have confidential treatment of their medical and personal records.~~
12 ~~Each resident or his responsible family member or his guardian shall approve or~~
13 ~~refuse the release of such records to any individuals outside the facility, except as~~
14 ~~otherwise specified by statute or administrative regulation.~~

15 ~~(8) Each resident may manage the use of his personal funds. If the facility accepts the~~
16 ~~responsibility for managing the resident's personal funds as evidenced by the~~
17 ~~facility's written acknowledgment, proper accounting and monitoring of such funds~~
18 ~~shall be made. This shall include each facility giving quarterly itemized statements~~
19 ~~to the resident and the responsible party or his responsible family member or his~~
20 ~~guardian which detail the status of the resident's personal funds and any transactions~~
21 ~~in which such funds have been received or disbursed. The facility shall return to the~~
22 ~~resident his valuables, personal possessions, and any unused balance of moneys~~
23 ~~from his account at the time of his transfer or discharge from the facility. In case of~~
24 ~~death or for valid reasons when he is transferred or discharged the resident's~~
25 ~~valuables, personal possessions, and funds that the facility is not liable for shall be~~
26 ~~promptly returned to the resident's responsible party or family member, or his~~
27 ~~guardian, or his executor.~~

- 1 ~~(9) If a resident is married, privacy shall be assured for the spouse's visits and if they~~
2 ~~are both residents in the facility, they may share the same room unless they are in~~
3 ~~different levels of care or unless medically contraindicated and documented by a~~
4 ~~physician in the resident's medical record.~~
- 5 ~~(10) Residents shall not be required to perform services for the facility that are not~~
6 ~~included for therapeutic purposes in their plan of care.~~
- 7 ~~(11) Residents may associate and communicate privately with persons of their choice~~
8 ~~and send and receive personal mail unopened.~~
- 9 ~~(12) Residents may retain the use of their personal clothing unless it would infringe upon~~
10 ~~the rights of others.~~
- 11 ~~(13) No responsible resident shall be detained against his will. Residents shall be~~
12 ~~permitted and encouraged to go outdoors and leave the premises as they wish unless~~
13 ~~a legitimate reason can be shown and documented for refusing such activity.~~
- 14 ~~(14) Residents shall be permitted to participate in activities of social, religious, and~~
15 ~~community groups at their discretion.~~
- 16 ~~(15) Residents shall be assured of at least visual privacy in multibed rooms and in tub,~~
17 ~~shower, and toilet rooms.~~
- 18 ~~(16) The resident and the responsible party or his responsible family member or his~~
19 ~~guardian shall be permitted the choice of a physician.~~
- 20 ~~(17) If the resident is adjudicated mentally disabled in accordance with state law, the~~
21 ~~resident's guardian shall act on the resident's behalf in order that his rights be~~
22 ~~implemented.~~
- 23 ~~(18) Each resident shall be treated with consideration, respect, and full recognition of his~~
24 ~~dignity and individuality, including privacy in treatment and in care for his personal~~
25 ~~needs.~~
- 26 ~~(19) Every resident and the responsible party or his responsible family member or his~~
27 ~~guardian has the right to be fully informed of the resident's medical condition unless~~

- 1 ~~medically contraindicated and documented by a physician in the resident's medical~~
2 ~~record.~~
- 3 ~~(20) Residents have the right to be suitably dressed at all times and given assistance~~
4 ~~when needed in maintaining body hygiene and good grooming.~~
- 5 ~~(21) Residents shall have access to a telephone at a convenient location within the~~
6 ~~facility for making and receiving telephone calls.~~
- 7 ~~(22) The resident's responsible party or family member or his guardian shall be notified~~
8 ~~immediately of any accident, sudden illness, disease, unexplained absence, or~~
9 ~~anything unusual involving the resident.~~
- 10 ~~(23) Residents have the right to have private meetings with the appropriate long-term~~
11 ~~care facility inspectors from the Cabinet for Health and Family Services.~~
- 12 ~~(24) Each resident and the responsible party or his responsible family member or his~~
13 ~~guardian has the right to have access to all inspection reports on the facility.~~
- 14 ~~(25) The above stated rights shall apply in all cases unless medically contraindicated and~~
15 ~~documented by a physician in writing in the resident's medical record.~~
- 16 ~~(26) Any resident whose rights as specified in this section are deprived or infringed upon~~
17 ~~shall have a cause of action against any facility responsible for the violation. The~~
18 ~~action may be brought by the resident or his guardian. The action may be brought in~~
19 ~~any court of competent jurisdiction to enforce such rights and to recover actual and~~
20 ~~punitive damages for any deprivation or infringement on the rights of a resident.~~
21 ~~Any plaintiff who prevails in such action against the facility may be entitled to~~
22 ~~recover reasonable attorney's fees, costs of the action, and damages, unless the court~~
23 ~~finds the plaintiff has acted in bad faith, with malicious purpose, or that there was a~~
24 ~~complete absence of justifiable issue of either law or fact. Prevailing defendants~~
25 ~~may be entitled to recover reasonable attorney's fees. The remedies provided in this~~
26 ~~section are in addition to and cumulative with other legal and administrative~~
27 ~~remedies available to a resident and to the cabinet].~~

1 ➔Section 5. KRS 216.525 is amended to read as follows:

2 For the purpose of supplementing, monitoring and enforcing the rights of residents in
3 long-term care facilities, the cabinet shall take the following actions:

- 4 (1) The cabinet shall design and distribute posters to all long-term care facilities
5 ~~that~~~~[which]~~ clearly detail how the resident and his **or her** responsible family
6 member or his **or her** guardian or a visitor may make a written or oral complaint,
7 anonymously if they so choose, to the cabinet in regard to the quality of care given
8 by a particular facility. These posters shall be conspicuously displayed throughout
9 each long-term care facility.
- 10 (2) The cabinet shall take appropriate and necessary actions to insure that all of the
11 rights of residents in long-term care facilities ~~as defined by KRS 216.515 to~~
12 ~~216.525~~ are upheld.

13 ➔Section 6. KRS 216.555 is amended to read as follows:

- 14 (1) If upon inspection or investigation the cabinet determines that a long-term care
15 facility has violated the regulations, standards, and requirements as set forth by the
16 cabinet pursuant to the provisions of KRS **216.515 to 216.563**~~[216.510 to 216.525]~~,
17 or applicable **administrative**~~[federal laws and]~~ regulations governing the
18 **licensure**~~[certification]~~ of a long-term care facility **that is not certified** under Title
19 **XVIII or XIX**~~[18 or 19]~~ of the Social Security Act and ~~the~~~~[such]~~ violation has been
20 classified in KRS 216.557, the cabinet shall immediately issue a citation to the
21 licensee of the long-term care facility. Each notice of violation shall be prepared in
22 writing and shall specify the nature of the violation, and the statutory provision or
23 regulation alleged to have been violated.
- 24 (2) Except as otherwise provided in this section, the results of a survey, inspection, or
25 investigation of a long-term care facility conducted by any state or federal
26 department or agency, including all statements of deficiencies, findings of
27 deficiency, and all plans of correction, shall not be used in an advertisement

1 publication, unless the advertisement publication includes all of the following:

- 2 (a) The date the survey, inspection, or investigation was conducted;
- 3 (b) A statement that a facility is required to submit a plan of correction in
4 response to a statement of deficiencies, if applicable;
- 5 (c) If a finding or deficiency cited in the statement of deficiencies has been
6 corrected, a statement that the finding or deficiency has been corrected and the
7 date that the finding or deficiency was corrected; and
- 8 (d) A statement that the advertisement publication is not authorized or endorsed
9 by the Cabinet for Health and Family Services, Office of Inspector General,
10 the Centers for Medicare and Medicaid Services, or any other government
11 agency.

12 (3) This section does not prohibit the results of a survey, inspection, or investigation
13 conducted under this section from being used in an administrative proceeding or a
14 civil or criminal investigation or prosecution.

15 (4) The information required by subsection (2) of this section shall:

- 16 (a) Be in the same color, font, and size as the other language on or in the
17 advertisement publication; and
- 18 (b) Appear as prominent as other language used in the advertisement publication.

19 ➔Section 7. KRS 216.557 is amended to read as follows:

20 Citations issued pursuant to KRS 216.537 to 216.590 shall be classified according to the
21 nature of the violation as follows:

- 22 (1) Type "A" violation means a violation by a long-term care facility ***that is not***
23 ***certified under Title XVIII or XIX of the Social Security Act, of the***
24 ***administrative regulations,***~~[of the regulation,]~~ standards, and requirements as set
25 forth by the cabinet pursuant to KRS ***216.515 to*** 216.563~~[or the provisions of KRS~~
26 ~~216.510 to 216.525]~~, or ***other*** applicable ***administrative***~~[federal laws and]~~
27 regulations governing the ***licensure***~~[certification]~~ of a long-term care facility~~[under~~

1 ~~Title 18 or 19 of the Social Security Act~~, which presents an imminent danger to
2 any resident ~~[of a long-term care facility]~~ and creates substantial risk that death or
3 serious mental or physical harm to a resident will occur. A Type A violation shall
4 be abated or eliminated immediately, unless a fixed period of time not to exceed ten
5 (10) days, as determined by the cabinet, is required for correction. A Type A
6 violation is subject to a civil penalty in an amount not less than one thousand dollars
7 (\$1,000) nor more than five thousand dollars (\$5,000) for each and every violation.
8 ~~[A facility that is assessed a civil monetary penalty in accordance with applicable~~
9 ~~federal laws and regulations under Title 18 or 19 of the Federal Social Security Act~~
10 ~~shall not be subject to the civil monetary penalty established in this subsection for~~
11 ~~the same violation.]~~

12 (2) Type "B" violation means a violation by a long-term care facility ***that is not***
13 ***certified under Title XVIII or XIX of the Social Security Act***, of the
14 ***administrative*** regulations, standards, and requirements as set forth by the cabinet
15 pursuant to KRS ***216.515 to*** 216.563~~[or the provisions of KRS 216.510 to~~
16 ~~216.525]~~, or ***other*** applicable ***administrative***~~[federal laws and]~~ regulations
17 governing the ***licensure***~~[certification]~~ of a long-term care facility~~[under Title 18 or~~
18 ~~19 of the Social Security Act]~~, which presents a direct or immediate relationship to
19 the health, safety, or security of any resident, but which does not create an imminent
20 danger. A Type B violation is subject to a civil penalty in an amount not less than
21 one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each and
22 every violation. A citation for a Type B violation shall specify the time within
23 which the violation is required to be corrected as approved or determined by the
24 cabinet. If a Type B violation is corrected within the time specified, no civil penalty
25 shall be imposed.~~[A facility that is assessed a civil monetary penalty in accordance~~
26 ~~with applicable federal laws and regulations under Title 18 or 19 of the Federal~~
27 ~~Social Security Act shall not be subject to the civil monetary penalty established in~~

1 ~~this subsection for the same violation.]~~

2 ➔Section 8. KRS 216.560 is amended to read as follows:

- 3 (1) If a licensee **that is not certified under Title XVIII or XIX of the Social Security**
4 **Act** has failed to correct a Type A violation within the time specified for correction
5 by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of
6 five hundred dollars (\$500) for each day that the deficiency continues beyond the
7 date specified for correction. Application for an extension of time, not to exceed ten
8 (10) days, may be granted by the cabinet upon a showing by the licensee that
9 adequate arrangements have been made to protect the health and safety of the
10 residents.~~[A facility that is assessed a civil monetary penalty in accordance with~~
11 ~~applicable federal laws and regulations under Title 18 or 19 of the Federal Social~~
12 ~~Security Act shall not be subject to the civil monetary penalty established in this~~
13 ~~subsection for the same violation.]~~
- 14 (2) If a licensee **that is not certified under Title XVIII or XIX of the Social Security**
15 **Act** has failed to correct a Type B violation within the time specified for correction
16 by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of
17 two hundred dollars (\$200) for each day that the deficiency continues beyond the
18 date specified for correction. Application for an extension of time, not to exceed
19 (10) days, may be granted by the cabinet upon a showing by the licensee that
20 adequate arrangements have been made to protect the health and safety of the
21 residents.~~[A facility that is assessed a civil monetary penalty in accordance with~~
22 ~~applicable federal laws and regulations under Title 18 or 19 of the Federal Social~~
23 ~~Security Act shall not be subject to the civil monetary penalty established in this~~
24 ~~subsection for the same violation.]~~
- 25 (3) The civil penalties authorized by KRS 216.537 to 216.590 shall be trebled when a
26 licensee has received a citation for violating a statute or **administrative** regulation
27 for which it has received a citation during the previous twelve (12) months.

- 1 (4) Payment of penalties shall not be made from moneys used for direct patient care~~]~~
2 ~~nor shall the payment of penalties be a reimbursable cost under Medicaid or~~
3 ~~Medicare]~~.
- 4 (5) KRS 216B.990(3) shall not apply to the offenses defined herein.
- 5 (6) A personal care home that is assessed a civil monetary penalty for a Type A or Type
6 B citation shall have the amount of the penalty reduced by the dollar amount that
7 the facility can verify was used to correct the deficiency, if:
- 8 (a) The condition resulting in the deficiency citation existed for less than thirty
9 (30) days prior to the date of the citation; or
- 10 (b) The facility has not intentionally delayed correcting the deficiency to secure a
11 reduction in a penalty that might subsequently be assessed.
- 12 (7) All administrative fines collected by the cabinet pursuant to KRS 216.537 to
13 216.590 shall be deposited in the Kentucky civil penalty fund~~[nursing incentive~~
14 ~~scholarship fund]~~, which is hereby created, and the balance of that fund shall not
15 lapse at the end of the fiscal year **but shall be carried forward into the succeeding**
16 **fiscal year and be used by the Cabinet for Health and Family Services to support**
17 **activities that protect or improve the quality of care or quality of life for residents**
18 **of long-term care facilities that are not certified under Title XVIII or XIX of the**
19 **Social Security Act. Interest earned on any moneys in the account shall accrue to**
20 **the account**~~[to the general fund].~~
- 21 ➔Section 9. KRS 216.567 is amended to read as follows:
- 22 (1) The manner in which appeals are presented from any decision on ~~[ratings,]~~
23 citations~~]~~ or penalties pursuant to KRS 216.537 to 216.590 shall be in accordance
24 with KRS Chapter 13B.
- 25 (2) The secretary shall appoint one (1) or more impartial hearing officers to hear and
26 decide upon appealed decisions. **A copy of the hearing officer's recommended**
27 **order shall be sent to each party in the hearing and each party shall have fifteen**

1 *(15) days from the date the recommended order is mailed within which to file*
 2 *exceptions to the recommendations with the agency head* ~~[The decision of the~~
 3 ~~hearing officer shall be the final order of the cabinet].~~

4 (3) *The secretary shall render a final order in accordance with KRS 13B.120.*

5 (4) Any party aggrieved by a final order may seek judicial review by filing a petition in
 6 the Franklin Circuit Court in accordance with KRS 13B.140 and 13B.150.

7 ➔Section 10. KRS 216B.015 is amended to read as follows:

8 Except as otherwise provided, for purposes of this chapter, the following definitions shall
 9 apply:

10 (1) "Abortion facility" means any place in which an abortion is performed;

11 (2) "Administrative regulation" means a regulation adopted and promulgated pursuant
 12 to the procedures in KRS Chapter 13A;

13 (3) "Affected persons" means the applicant; any person residing within the geographic
 14 area served or to be served by the applicant; any person who regularly uses health
 15 facilities within that geographic area; health facilities located in the health service
 16 area in which the project is proposed to be located which provide services similar to
 17 the services of the facility under review; health facilities which, prior to receipt by
 18 the agency of the proposal being reviewed, have formally indicated an intention to
 19 provide similar services in the future; and the cabinet and third-party payors who
 20 reimburse health facilities for services in the health service area in which the project
 21 is proposed to be located;

22 (4) (a) "Ambulatory surgical center" means a health facility:

23 1. Licensed pursuant to administrative regulations promulgated by the
 24 cabinet;

25 2. That provides outpatient surgical services, excluding oral or dental
 26 procedures; and

27 3. Seeking recognition and reimbursement as an ambulatory surgical center

1 from any federal, state, or third-party insurer from which payment is
2 sought.

3 (b) An ambulatory surgical center does not include the private offices of
4 physicians where in-office outpatient surgical procedures are performed as
5 long as the physician office does not seek licensure, certification,
6 reimbursement, or recognition as an ambulatory surgical center from a federal,
7 state, or third-party insurer.

8 (c) Nothing in this subsection shall preclude a physician from negotiating
9 enhanced payment for outpatient surgical procedures performed in the
10 physician's private office so long as the physician does not seek recognition or
11 reimbursement of his or her office as an ambulatory surgical center without
12 first obtaining a certificate of need or license required under KRS 216B.020
13 and 216B.061;

14 (5) "Applicant" means any physician's office requesting a major medical equipment
15 expenditure exceeding the capital expenditure minimum, or any person, health
16 facility, or health service requesting a certificate of need or license;

17 (6) "Cabinet" means the Cabinet for Health and Family Services;

18 (7) "Capital expenditure" means an expenditure made by or on behalf of a health
19 facility ~~that~~which:

20 (a) Under generally accepted accounting principles is not properly chargeable as
21 an expense of operation and maintenance or is not for investment purposes
22 only; or

23 (b) Is made to obtain by lease or comparable arrangement any facility or part
24 thereof or any equipment for a facility or part thereof;

25 (8) "Capital expenditure minimum" means the annually adjusted amount set by the
26 cabinet. In determining whether an expenditure exceeds the expenditure minimum,
27 the cost of any studies, surveys, designs, plans, working drawings, specifications,

1 and other activities essential to the improvement, expansion, or replacement of any
2 plant or any equipment with respect to which the expenditure is made shall be
3 included. Donations of equipment or facilities to a health facility ~~that~~^{which} if
4 acquired directly by the facility would be subject to review under this chapter shall
5 be considered a capital expenditure, and a transfer of the equipment or facilities for
6 less than fair market value shall be considered a capital expenditure if a transfer of
7 the equipment or facilities at fair market value would be subject to review;

8 (9) "Certificate of need" means an authorization by the cabinet to acquire, to establish,
9 to offer, to substantially change the bed capacity, or to substantially change a health
10 service as covered by this chapter;

11 (10) "Certified surgical assistant" means a certified surgical assistant or certified first
12 assistant who is certified by the National Commission for~~Surgical Assistant~~
13 ~~Association on~~ the Certification of Surgical Assistants, the National Board of
14 Surgical Technology and Surgical Assisting~~Liaison Council on Certification of~~
15 ~~Surgical Technologists~~, or the American Board of Surgical Assistants. The
16 certified surgical assistant is an unlicensed health-care provider who is directly
17 accountable to a physician licensed under KRS Chapter 311 or, in the absence of a
18 physician, to a registered nurse licensed under KRS Chapter 314;

19 (11) "Continuing care retirement community" means a community that provides, on the
20 same campus, a continuum of residential living options and support services to
21 persons sixty (60) years of age or older under a written agreement. The residential
22 living options shall include independent living units, nursing home beds, and either
23 assisted living units or personal care beds;

24 (12) "Formal review process" means the ninety (90) day certificate-of-need review
25 conducted by the cabinet;

26 (13) "Health facility" means any institution, place, building, agency, or portion thereof,
27 public or private, whether organized for profit or not, used, operated, or designed to

1 provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and
2 includes alcohol abuse, drug abuse, and mental health services~~[- This shall include~~
3 ~~but shall not be limited to health facilities and health services commonly referred to~~
4 ~~as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical~~
5 ~~dependency programs, nursing facilities, nursing homes, personal care homes,~~
6 ~~intermediate care facilities, family care homes, outpatient clinics, ambulatory care~~
7 ~~facilities, ambulatory surgical centers, emergency care centers and services,~~
8 ~~ambulance providers, hospices, community mental health centers, home health~~
9 ~~agencies, kidney disease treatment centers and freestanding hemodialysis units, and~~
10 ~~others providing similarly organized services regardless of nomenclature];~~

11 (14) "Health services" means clinically related services provided within the
12 Commonwealth to two (2) or more persons, including but not limited to diagnostic,
13 treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental
14 health services;

15 (15) "Independent living" means the provision of living units and supportive services,
16 including but not limited to laundry, housekeeping, maintenance, activity direction,
17 security, dining options, and transportation;

18 (16) "Intraoperative surgical care" includes the practice of surgical assisting in which the
19 certified surgical assistant or physician assistant is working under the direction of
20 the operating physician as a first or second assist, and ~~that~~which may include the
21 following procedures:

22 (a) Positioning the patient;

23 (b) Preparing and draping the patient for the operative procedure;

24 (c) Observing the operative site during the operative procedure;

25 (d) Providing the best possible exposure of the anatomy incident to the operative
26 procedure;

27 (e) Assisting in closure of incisions and wound dressings; and

- 1 (f) Performing any task, within the role of an unlicensed assistive person, or if the
2 assistant is a physician assistant, performing any task within the role of a
3 physician assistant, as required by the operating physician incident to the
4 particular procedure being performed;
- 5 (17) "Major medical equipment" means equipment ~~that~~^{which} is used for the provision
6 of medical and other health services and ~~that~~^{which} costs in excess of the medical
7 equipment expenditure minimum. In determining whether medical equipment has a
8 value in excess of the medical equipment expenditure minimum, the value of
9 studies, surveys, designs, plans, working drawings, specifications, and other
10 activities essential to the acquisition of the equipment shall be included;
- 11 (18) "Nonsubstantive review" means an expedited review conducted by the cabinet of an
12 application for a certificate of need as authorized under KRS 216B.095;
- 13 (19) "Nonclinically related expenditures" means expenditures for:
- 14 (a) Repairs, renovations, alterations, and improvements to the physical plant of a
15 health facility ~~that~~^{which} do not result in a substantial change in beds, a
16 substantial change in a health service, or the addition of major medical
17 equipment, and do not constitute the replacement or relocation of a health
18 facility; or
- 19 (b) Projects ~~that~~^{which} do not involve the provision of direct clinical patient
20 care, including but not limited to the following:
- 21 1. Parking facilities;
 - 22 2. Telecommunications or telephone systems;
 - 23 3. Management information systems;
 - 24 4. Ventilation systems;
 - 25 5. Heating or air conditioning, or both;
 - 26 6. Energy conservation; or
 - 27 7. Administrative offices;

- 1 (20) "Party to the proceedings" means the applicant for a certificate of need and any
2 affected person who appears at a hearing on the matter under consideration and
3 enters an appearance of record;
- 4 (21) "Perioperative nursing" means a practice of nursing in which the nurse provides
5 preoperative, intraoperative, and postoperative nursing care to surgical patients;
- 6 (22) "Person" means an individual, a trust or estate, a partnership, a corporation, an
7 association, a group, state, or political subdivision or instrumentality including a
8 municipal corporation of a state;
- 9 (23) "Physician assistant" means the same as the definition provided in KRS 311.550;
- 10 (24) "Record" means, as applicable in a particular proceeding:
- 11 (a) The application and any information provided by the applicant at the request
12 of the cabinet;
- 13 (b) Any information provided by a holder of a certificate of need or license in
14 response to a notice of revocation of a certificate of need or license;
- 15 (c) Any memoranda or documents prepared by or for the cabinet regarding the
16 matter under review ~~that~~~~which~~ were introduced at any hearing;
- 17 (d) Any staff reports or recommendations prepared by or for the cabinet;
- 18 (e) Any recommendation or decision of the cabinet;
- 19 (f) Any testimony or documentary evidence adduced at a hearing;
- 20 (g) The findings of fact and opinions of the cabinet or the findings of fact and
21 recommendation of the hearing officer; and
- 22 (h) Any other items required by administrative regulations promulgated by the
23 cabinet;
- 24 (25) "Registered nurse first assistant" means one who:
- 25 (a) Holds a current active registered nurse ~~license~~~~licensure~~;
- 26 (b) Is certified in perioperative nursing; and
- 27 (c) Has successfully completed and holds a degree or certificate from a

1 recognized program, which shall consist of:

- 2 1. The Association of periOperative Registered~~Operating Room~~ Nurses,
3 Inc., Core Curriculum for the registered nurse first assistant; and
- 4 2. One (1) year of postbasic nursing study, which shall include at least
5 forty-five (45) hours of didactic instruction and one hundred twenty
6 (120) hours of clinical internship or its equivalent of two (2) college
7 semesters.

8 A registered nurse who was certified prior to 1995 by the Certification Board of
9 Perioperative Nursing shall not be required to fulfill the requirements of paragraph
10 (c) of this subsection;

11 (26) "Secretary" means the secretary of the Cabinet for Health and Family Services;

12 (27) "Sexual assault examination facility" means a licensed health facility, emergency
13 medical facility,~~primary care center,~~ or a children's advocacy center or rape crisis
14 center that is regulated by the Cabinet for Health and Family Services, and that
15 provides sexual assault examinations under KRS 216B.400;

16 (28) "State health plan" means the document prepared triennially, updated annually, and
17 approved by the Governor;

18 (29) "Substantial change in a health service" means:

19 (a) The addition of a health service for which there are review criteria and
20 standards in the state health plan; or

21 (b) The addition of a health service subject to licensure under this chapter;

22 (30) "Substantial change in bed capacity" means the addition or reduction of beds by
23 licensure classification within a health facility;

24 (31) "Substantial change in a project" means a change made to a pending or approved
25 project that~~which~~ results in:

26 (a) A substantial change in a health service, except a reduction or termination of a
27 health service;

- 1 (b) A substantial change in bed capacity, except for reductions;
- 2 (c) A change of location; or
- 3 (d) An increase in costs greater than the allowable amount as prescribed by
- 4 administrative regulation;
- 5 (32) "To acquire" means to obtain from another by purchase, transfer, lease, or other
- 6 comparable arrangement of the controlling interest of a capital asset or capital stock,
- 7 or voting rights of a corporation. An acquisition shall be deemed to occur when
- 8 more than fifty percent (50%) of an existing capital asset or capital stock or voting
- 9 rights of a corporation is purchased, transferred, leased, or acquired by comparable
- 10 arrangement by one (1) person from another person;
- 11 (33) "To batch" means to review in the same review cycle and, if applicable, give
- 12 comparative consideration to all filed applications pertaining to similar types of
- 13 services, facilities, or equipment affecting the same health service area;
- 14 (34) "To establish" means to construct, develop, or initiate a health facility;
- 15 (35) "To obligate" means to enter any enforceable contract for the construction,
- 16 acquisition, lease, or financing of a capital asset. A contract shall be considered
- 17 enforceable when all contingencies and conditions in the contract have been met.
- 18 An option to purchase or lease ~~that~~^{which} is not binding shall not be considered an
- 19 enforceable contract; and
- 20 (36) "To offer" means, when used in connection with health services, to hold a health
- 21 facility out as capable of providing, or as having the means of providing, specified
- 22 health services.

23 ➔Section 11. KRS 216B.020 is amended to read as follows:

- 24 (1) **Health facilities or health services are required to obtain a certificate of need if:**
- 25 **(a) Establishing an acute care hospital, unless the hospital does not charge its**
- 26 **patients for hospital services and does not seek or accept Medicare,**
- 27 **Medicaid, or other financial support from the federal government or any**

1 state government;

2 (b) Adding acute care hospital beds, unless the result of:

3 1. The relocation of acute care beds that occur among acute care
4 hospitals under common ownership and that are located in the same
5 area development district so long as there is no substantial change in
6 services and the relocation does not result in the establishment of a
7 new service at the receiving hospital for which a certificate of need is
8 required; or

9 2. The redistribution of beds by licensure classification within an acute
10 care hospital so long as the redistribution does not increase the total
11 licensed bed capacity of the hospital;

12 (c) Establishing an adult day health care center;

13 (d) Establishing an ambulatory surgical center as defined by KRS 216B.015(4);

14 (e) Providing diagnostic or therapeutic cardiac catheterization services;

15 (f) Establishing a chemical dependency treatment program or adding chemical
16 beds;

17 (g) Establishing a comprehensive physical rehabilitation hospital or expanding
18 comprehensive physical rehabilitation beds;

19 (h) Establishing a freestanding ambulatory surgical center;

20 (i) Establishing a freestanding birth center;

21 (j) Establishing a freestanding emergency department that is owned by a
22 Kentucky-licensed hospital and located off-campus;

23 (k) Establishing a ground ambulance service;

24 (l) Establishing a home health agency or expanding a home health service;

25 (m) Establishing or expanding hospice services;

26 (n) Establishing an intermediate care facility for individuals with intellectual
27 disabilities;

1 (o) Establishing a long-term care facility or adding long-term care beds, unless
 2 the:

3 1. Facility is operated by a state veterans' nursing home;

4 2. Applicant is establishing a nursing home or adding nursing home
 5 beds;

6 3. Facility is exclusively limited to on-campus residents of a certified
 7 continuing care retirement community; or

8 4. Applicant is establishing a personal care home or adding personal
 9 care beds;

10 (p) Establishing megavoltage radiation therapy services;

11 (q) Establishing an open heart surgery program;

12 (r) Establishing an organ transplant program;

13 (s) Establishing positron emission tomography (PET) imaging services or
 14 expanding a mobile PET service;

15 (t) Establishing a prescribed pediatric extended care facility;

16 (u) Establishing a private duty nursing service;

17 (v) Establishing a psychiatric hospital or adding psychiatric beds;

18 (w) Establishing or adding special care neonatal beds; or

19 (x) It is an existing health facility or health service that:

20 1. Requests an expenditure that exceeds the major medical equipment
 21 expenditure minimum; or

22 2. Excluding a nonclinically related expenditure, obligates a capital
 23 expenditure that exceeds the capital expenditure minimum.~~The~~

24 ~~provisions of this chapter that relate to the issuance of a certificate of~~
 25 ~~need shall not apply to abortion facilities as defined in KRS 216B.015;~~
 26 ~~any hospital which does not charge its patients for hospital services and~~
 27 ~~does not seek or accept Medicare, Medicaid, or other financial support~~

1 from the federal government or any state government; assisted living
2 residences; family care homes; state veterans' nursing homes; services
3 provided on a contractual basis in a rural primary care hospital as
4 provided under KRS 216.380; community mental health centers for
5 services as defined in KRS Chapter 210; primary care centers; rural
6 health clinics; private duty nursing services operating as nursing pools;
7 group homes; licensed residential crisis stabilization units; licensed free-
8 standing residential substance use disorder treatment programs with
9 sixteen (16) or fewer beds, but not including Levels I and II psychiatric
10 residential treatment facilities or licensed psychiatric inpatient beds;
11 outpatient behavioral health treatment, but not including partial
12 hospitalization programs; end stage renal disease dialysis facilities,
13 freestanding or hospital based; swing beds; special clinics, including but
14 not limited to wellness, weight loss, family planning, disability
15 determination, speech and hearing, counseling, pulmonary care, and
16 other clinics which only provide diagnostic services with equipment not
17 exceeding the major medical equipment cost threshold and for which
18 there are no review criteria in the state health plan; nonclinically related
19 expenditures; nursing home beds that shall be exclusively limited to on-
20 campus residents of a certified continuing care retirement community;
21 home health services provided by a continuing care retirement
22 community to its on-campus residents; the relocation of hospital
23 administrative or outpatient services into medical office buildings which
24 are on or contiguous to the premises of the hospital; the relocation of
25 acute care beds which occur among acute care hospitals under common
26 ownership and which are located in the same area development district
27 so long as there is no substantial change in services and the relocation

1 ~~does not result in the establishment of a new service at the receiving~~
2 ~~hospital for which a certificate of need is required; the redistribution of~~
3 ~~beds by licensure classification within an acute care hospital so long as~~
4 ~~the redistribution does not increase the total licensed bed capacity of the~~
5 ~~hospital; residential hospice facilities established by licensed hospice~~
6 ~~programs; or the following health services provided on site in an~~
7 ~~existing health facility when the cost is less than six hundred thousand~~
8 ~~dollars (\$600,000) and the services are in place by December 30, 1991:~~
9 ~~psychiatric care where chemical dependency services are provided, level~~
10 ~~one (1) and level two (2) of neonatal care, cardiac catheterization, and~~
11 ~~open heart surgery where cardiac catheterization services are in place as~~
12 ~~of July 15, 1990. The provisions of this section shall not apply to~~
13 ~~nursing homes, personal care homes, intermediate care facilities, and~~
14 ~~family care homes; or nonconforming ambulance services as defined by~~
15 ~~administrative regulation. These listed facilities or services shall be~~
16 ~~subject to licensure, when applicable].~~

17 (2) Nothing in this chapter shall be construed to authorize the licensure, supervision,
18 regulation, or control in any manner of:

19 (a) Private offices and clinics of physicians, dentists, and other practitioners of
20 the healing arts, except any physician's office that meets the criteria set forth
21 in KRS 216B.015(5) or that meets the definition of an ambulatory surgical
22 center as set out in KRS 216B.015;

23 (b) Office buildings built by or on behalf of a health facility for the exclusive use
24 of physicians, dentists, and other practitioners of the healing arts; unless the
25 physician's office meets the criteria set forth in KRS 216B.015(5), or unless
26 the physician's office is also an abortion facility as defined in KRS 216B.015,
27 except no capital expenditure or expenses relating to any such building shall

1 be chargeable to or reimbursable as a cost for providing inpatient services
 2 offered by a health facility;

3 ~~(c) Outpatient health facilities or health services that:~~

4 1. ~~Do not provide services or hold patients in the facility after midnight;~~

5 and

6 2. ~~Are exempt from certificate of need and licensure under subsection (3)~~

7 ~~of this section;~~

8 ~~(d)~~ Dispensaries and first-aid stations located within business or industrial
 9 establishments maintained solely for the use of employees, if the facility does
 10 not contain inpatient or resident beds for patients or employees who generally
 11 remain in the facility for more than twenty-four (24) hours;

12 ~~(d)~~~~(e)~~ Establishments, such as motels, hotels, and boarding houses, which
 13 provide domiciliary and auxiliary commercial services, but do not provide any
 14 health related services and boarding houses which are operated by persons
 15 contracting with the United States Department of Veterans Affairs for
 16 boarding services;

17 ~~(e)~~~~(f)~~ The remedial care or treatment of residents or patients in any home or
 18 institution conducted only for those who rely solely upon treatment by prayer
 19 or spiritual means in accordance with the creed or tenets of any recognized
 20 church or religious denomination and recognized by that church or
 21 denomination; and

22 ~~(f)~~~~(g)~~ On-duty police and fire department personnel assisting in emergency
 23 situations by providing first aid or transportation when regular emergency
 24 units licensed to provide first aid or transportation are unable to arrive at the
 25 scene of an emergency situation within a reasonable time.

26 (3) The following outpatient categories of care shall be subject to licensure~~exempt~~
 27 ~~from certificate of need and licensure on July 14, 2018:~~

- 1 ~~(a) — Primary care centers;~~
- 2 ~~(b) — Special health clinics, unless the clinic provides pain management services and is~~
 3 ~~located off the campus of the hospital that has majority ownership interest;~~
- 4 ~~(c) — Specialized medical technology services, unless providing a State Health Plan~~
 5 ~~service;~~
- 6 ~~(d) — Retail based health clinics and ambulatory care clinics that provide nonemergency,~~
 7 ~~noninvasive treatment of patients;~~
- 8 ~~(e) — Ambulatory care clinics treating minor illnesses and injuries;~~
- 9 ~~(f) — Mobile health services, unless providing a service in the State Health Plan;~~
- 10 ~~(g) — Rehabilitation agencies;~~
- 11 ~~(h) — Rural health clinics; and~~
- 12 ~~(i) — Off campus, hospital acquired physician practices.~~
- 13 ~~(4) — The exemptions established by subsections (2) and (3) of this section shall not apply~~
 14 ~~to the following categories of care]:~~
- 15 (a) An ambulatory surgical center as defined by KRS 216B.015(4);
- 16 (b) A health facility or health service that provides one (1) of the following types
 17 of services:
- 18 1. Cardiac catheterization;
- 19 2. Megavoltage radiation therapy;
- 20 3. **Magnetic resonance imaging;**
- 21 **4. Positron emission tomography;**
- 22 **5.** Adult day health care;
- 23 **6.**~~[4.]~~ Behavioral health services;
- 24 **7.**~~[5.]~~ Chronic renal dialysis;
- 25 **8.**~~[6.]~~ Birthing services; or
- 26 **9.**~~[7.]~~ Emergency services above the level of treatment for minor illnesses or
 27 injuries;

1 (c) A nonphysician-owned pain management facility as defined by KRS
2 218A.175(1) and excluded from licensure under KRS 218A.175(2);

3 (d) An abortion facility that requires licensure pursuant to KRS 216B.0431; or

4 (e) A health facility or health service that requests an expenditure that exceeds the
5 major medical equipment expenditure minimum or obligates a capital
6 expenditure that exceeds the capital expenditure minimum.

7 ~~(4)~~~~(5)~~ An existing facility licensed as an intermediate care facility or nursing home
8 shall notify the cabinet of its intent to change to a nursing facility as defined in
9 Public Law 100-203. A certificate of need shall not be required for conversion of an
10 intermediate care facility or nursing home to the nursing facility licensure category.

11 ~~(5)~~~~(6)~~ Ambulance services owned and operated by a city government, which propose
12 to provide services in coterminous cities outside of the ambulance service's
13 designated geographic service area, shall not be required to obtain a certificate of
14 need if the governing body of the city in which the ambulance services are to be
15 provided enters into an agreement with the ambulance service to provide services in
16 the city.

17 ~~(6)~~~~(7)~~ Notwithstanding any other provision of law, a continuing care retirement
18 community's nursing home beds shall not be certified as Medicaid eligible unless a
19 certificate of need has been issued authorizing applications for Medicaid
20 certification. The provisions of subsection ~~(4)~~~~(5)~~ of this section notwithstanding, a
21 continuing care retirement community shall not change the level of care licensure
22 status of its beds without first obtaining a certificate of need.

23 ➔Section 12. KRS 216B.042 is amended to read as follows:

24 (1) The cabinet shall:

25 (a) Establish by promulgation of administrative regulation under KRS Chapter
26 13A reasonable application fees for licenses and promulgate other
27 administrative regulations necessary for the proper administration of the

- 1 licensure function;
- 2 (b) Issue, deny, revoke, modify, or ***take emergency action to*** suspend licenses or
3 provisional licenses in accordance with the provisions of this chapter;
- 4 (c) Establish licensure standards and procedures to ensure safe, adequate, and
5 efficient abortion facilities, health facilities and health services. These
6 ***administrative*** regulations, under KRS Chapter 13A, shall include, but need
7 not be limited to:
- 8 1. Patient care standards and safety standards, minimum operating
9 standards, minimum standards for training, required licenses for medical
10 staff personnel, and minimum standards for maintaining patient records;
- 11 2. Licensure application and renewal procedures; and
- 12 3. Classification of health facilities and health services according to type,
13 size, range of services, and level of care; and
- 14 (d) Compile in a single document, maintain, and make available to abortion
15 facilities and the public during regular business hours, all licensure standards
16 and procedures promulgated under KRS Chapter 13A related to abortion
17 facilities.
- 18 (2) The cabinet may authorize its agents or representatives to enter upon the premises
19 of any health care facility for the purpose of inspection, and under the conditions set
20 forth in administrative regulations promulgated under KRS Chapter 13A by the
21 cabinet.
- 22 (3) The cabinet may revoke licenses or certificates of need for specific health facilities
23 or health services or recommend the initiation of disciplinary proceedings for health
24 care providers on the basis of the knowing violation of any provisions of this
25 chapter.
- 26 ➔Section 13. KRS 216B.061 is amended to read as follows:
- 27 (1) Unless otherwise provided in this chapter, no person shall do any of the following

- 1 without first obtaining a certificate of need:
- 2 (a) Establish a health facility ***or health service in accordance with subsection (1)***
3 ***of Section 11 of this Act;***
- 4 (b) Obligate a capital expenditure which exceeds the capital expenditure
5 minimum;
- 6 (c) Make a substantial change in the bed capacity of a health facility;
- 7 (d) Make a substantial change in a health service;
- 8 (e) Make a substantial change in a project;
- 9 (f) Acquire major medical equipment;
- 10 (g) Alter a geographical area or alter a specific location which has been
11 designated on a certificate of need or license; ***or***
- 12 (h) Transfer an approved certificate of need for the establishment of a new health
13 facility or the replacement of a licensed facility.
- 14 (2) No person shall separate portions of a single project into components in order to
15 evade any expenditure minimum set forth in this chapter. For purposes of this
16 chapter, the acquisition of one (1) or more items of functionally related diagnostic
17 or therapeutic equipment shall be considered as one (1) project.
- 18 (3) No person shall have ex parte contact with the final-decision-making authority
19 engaged in certificate of need activities regarding a certificate-of-need application
20 from the commencement of the review cycle to the final decision. If an ex parte
21 contact occurs, it shall be promptly made a part of the record.
- 22 (4) No person shall obligate a capital expenditure in excess of the amount authorized by
23 an existing certificate of need unless the person has received an administrative
24 escalation from the cabinet as prescribed by regulation.
- 25 (5) No person shall proceed to obligate a capital expenditure under an approved
26 certificate of need if there has been a substantial change in the project.
- 27 (6) A certificate of need shall be issued for a specific location and, when applicable, for

1 a designated geographical area.

2 (7) No person shall establish an ambulatory surgical center as defined in KRS
3 216B.015 without obtaining a certificate of need. An ambulatory surgical center
4 shall require a certificate of need and license, notwithstanding any exemption
5 contained in KRS 216B.020.

6 (8) Nothing in this chapter shall be interpreted to require any ambulatory surgical center
7 licensed as of July 12, 2012, to obtain a certificate of need to continue operations
8 and exercise all of the rights of a licensed health care facility, regardless of whether
9 it obtained a certificate of need before being licensed.

10 ➔Section 14. KRS 216B.085 is amended to read as follows:

11 (1) Any time no later than fifteen (15) days after the date the review commences, any
12 affected person may request a public hearing. Hearings shall be before a person
13 designated by the secretary to serve as hearing officer. The hearing officer shall be
14 authorized to administer oaths, issue subpoenas and subpoenas duces tecum, and
15 oversee all necessary process in the proceedings.

16 (2) If a hearing is requested, the secretary shall set a date, time, and place for a public
17 hearing. Reasonable notice of the hearing shall be given to all affected persons in
18 accordance with administrative regulations promulgated by the cabinet.

19 (3) At the hearing, any party to the proceedings shall have the right to be represented by
20 counsel, and to present oral or written arguments and evidence relevant to the
21 matter that ~~which~~ is the subject of the hearing, and may conduct reasonable cross-
22 examination under oath of persons who make factual allegations relevant to such
23 matters. A full and complete record shall be maintained of the hearing.

24 (4) Any decision of the cabinet to issue or deny a certificate of need shall be based
25 solely on the record established with regard to the matter. All decisions granting,
26 denying, or modifying a certificate of need shall be made by the cabinet in writing.
27 The cabinet shall notify the parties to the proceedings of the decision and the

1 decision of the secretary shall be final for purposes of judicial appeal unless a
2 request for reconsideration is filed. An approved certificate of need shall be issued
3 forty (40) days after notice of the cabinet's decision unless a request for
4 reconsideration is filed or a judicial appeal is taken and issuance is enjoined by the
5 court.

6 ➔Section 15. KRS 216B.086 is amended to read as follows:

- 7 (1) The cabinet may revoke a certificate of need, or portion thereof, for failure of the
8 holder of the certificate to implement the project in accordance with timetables and
9 standards for implementation established by administrative regulation of the
10 cabinet; however, for projects involving long-term care beds, the cabinet may
11 revoke any certificate granted ~~that~~^{which} is not implemented within twenty-four
12 (24) months or within any six (6) month reporting interval during which there is not
13 satisfactory progress in meeting the project timetable and shall revoke any
14 certificate granted ~~that~~^{which} is not implemented within thirty-six (36) months
15 except for those projects specified as an exception pursuant to Executive Order 96-
16 129 in which case those projects shall be implemented according to the intervals
17 and timetable set forth in this section, as of the effective date of Medicaid funding
18 in the biennial budget for those projects. The administrative regulation for projects
19 involving long-term care beds shall be based on project completion in twenty-four
20 (24) months and shall specify criteria for measuring implementation of project
21 objectives at six (6) month reporting intervals. If, at any six (6) month reporting
22 period, the certificate holder is able to show good cause as to why a project failed to
23 meet its timetables, an extension of six (6) months may be granted to meet that
24 particular timetable. The burden of proof shall be on the certificate holder. An
25 extension may be granted beyond a total of thirty-six (36) months, only if the
26 applicant requests that the cabinet grant an additional six (6) month extension
27 beyond the initial thirty-six (36) month completion period and shows good cause.

1 For purposes of this section, there shall be deemed to be "good cause" if the project
2 can be completed within the additional six (6) month period. In no case shall an
3 extension be granted beyond a total of forty-two (42) months. The holder of the
4 certificate of need shall file with the cabinet the name and business address of all
5 owners, investors, and stockholders in the project whose ownership interest is
6 greater than ten percent (10%). All reports submitted by the certificate holder under
7 this subsection shall be considered a public record in accordance with the Kentucky
8 Open Records Law, KRS 61.870 to 61.884.

9 (2) The cabinet shall give notice to the holder of the certificate of its initial decision to
10 revoke the certificate of need or portion thereof. The cabinet's initial decision to
11 revoke a certificate of need or portion thereof shall become final after thirty (30)
12 days unless a hearing is requested. The secretary shall give notice to the holder of
13 the certificate of a decision ~~that~~^{which} has become final under the provisions of
14 this subsection.

15 (3) The holder of the certificate of need to be revoked may request in writing a public
16 hearing in respect to an initial decision by the cabinet to revoke a certificate of need
17 within thirty (30) days of the date of notice of the initial decision. Failure to request
18 a hearing shall constitute a waiver of any right to reconsideration or judicial appeal
19 of a final cabinet decision to revoke a certificate of need.

20 (4) The hearing shall be before a person designated by the secretary to be the hearing
21 officer. The hearing shall be no later than thirty (30) days after the request for the
22 hearing is filed.

23 (5) If a hearing is requested, the secretary shall set a date, time, and place for a public
24 hearing. Reasonable notice of the hearing shall be given to all affected persons in
25 accordance with administrative regulations promulgated by the cabinet.

26 (6) At the hearing, any party to the proceedings shall have the right to be represented by
27 counsel and to present oral or written arguments and evidence relevant to the

1 revocation of the certificate of need and may conduct reasonable cross-examination
2 under oath of persons who testify. A full and complete record shall be maintained of
3 the hearing, and all testimony shall be recorded but not be transcribed unless the
4 cabinet's final decision is appealed pursuant to this chapter.

5 (7) After the issuance of an initial decision to revoke a certificate of need and before a
6 final decision is made, no person shall have ex parte contacts with employees of the
7 cabinet regarding the revocation. If an ex parte contact occurs, it shall be promptly
8 made a part of the record.

9 (8) If a hearing is requested after notice of the cabinet's initial decision to revoke a
10 certificate of need, the cabinet shall make a final decision within thirty (30) days
11 after the hearing. Any final decision revoking a certificate of need shall be made by
12 the cabinet in writing. The cabinet shall notify the parties to the proceedings of the
13 final decision.

14 (9) Any final decision of the cabinet secretary to revoke a certificate of need shall be
15 based solely on the record established with regard to the revocation.

16 (10) Except as provided in subsection (3) of this section, reconsideration pursuant to
17 KRS 216B.090 or judicial appeal pursuant to KRS 216B.115 shall be available with
18 regard to a final decision of the cabinet to revoke a certificate of need.

19 ➔Section 16. KRS 216B.105 is amended to read as follows:

20 (1) Unless otherwise provided in this chapter, no person shall operate any health facility
21 in this Commonwealth without first obtaining a license issued by the cabinet, which
22 license shall specify the kind or kinds of health services the facility is authorized to
23 provide. A license shall not be transferable and shall be issued for a specific
24 location and, if specified, a designated geographical area.

25 (2) (a) The cabinet may deny, revoke, or modify~~, or suspend~~ a license in any case in
26 which it finds that there has been a substantial failure to comply with the
27 provisions of this chapter or the administrative regulations promulgated

1 hereunder. The denial, revocation, or modification~~[, or suspension]~~ shall be
2 effected by providing~~[mailing]~~ to the applicant or licensee, by certified mail
3 or other method of delivery that~~[which]~~ may include electronic service, a
4 notice setting forth the particular reasons for the action. The denial,
5 revocation, or modification~~[, or suspension]~~ shall become final and conclusive
6 thirty (30) days after notice is given, unless the applicant or licensee, within
7 the thirty (30) day period, files~~[shall file]~~ a request in writing for a hearing
8 with the cabinet.

9 *(b) If the cabinet has probable cause to believe that there is an immediate*
10 *threat to public health, safety, or welfare, the cabinet may issue an*
11 *emergency order to suspend the license. The emergency order to suspend*
12 *the license shall be provided to the licensee, by certified mail or other*
13 *method of delivery, which may include electronic service, along with a*
14 *notice setting forth the particular reasons for the action.*

15 (3) *Any person required to comply with an emergency order issued under subsection*
16 *(2) of this section may request an emergency hearing within five (5) calendar*
17 *days of receipt of the notice to determine the propriety of the order. The cabinet*
18 *shall conduct an emergency hearing within ten (10) working days of the request*
19 *for hearing. Within five (5) working days of completion of the hearing, the*
20 *cabinet's hearing officer shall render a written decision affirming, modifying, or*
21 *revoking the emergency order. The emergency order shall be affirmed if there is*
22 *substantial evidence of a violation of law that constitutes an immediate danger to*
23 *public health, safety, or welfare. The decision rendered by the hearing officer*
24 *shall be a final order of the cabinet on the matter, and any party aggrieved by the*
25 *decision may appeal to Circuit Court.*

26 *(4) If the cabinet issues an emergency order, the cabinet shall take action to revoke*
27 *the facility's license if:*

1 (a) The facility fails to submit a written request for an emergency hearing
 2 within five (5) calendar days of receipt of the notice; or

3 (b) The decision rendered under subsection (3) of this section affirms that there
 4 is substantial evidence of an immediate danger to public health, safety, or
 5 welfare.

6 (5) The hearing, including an emergency hearing, shall be before a person designated
 7 to serve as hearing officer by the secretary.

8 (6)~~[(4)]~~ Within five (5) working days of completion of a hearing on an emergency
 9 suspension or within thirty (30) calendar days from the conclusion of a hearing on
 10 the denial, revocation, or modification of a license~~[the hearing]~~, the findings and
 11 recommendations of the hearing officer shall be transmitted to the cabinet, with a
 12 synopsis of the evidence contained in the record and a statement of the basis of the
 13 hearing officer's findings. The applicant or licensee shall be entitled to be
 14 represented at the hearing in person or by counsel, or both, and shall be entitled to
 15 introduce testimony by witnesses or, if the cabinet so permits, by depositions. A full
 16 and complete record shall be kept of all hearings, and all testimony shall be reported
 17 but need not be transcribed unless the decision is appealed pursuant to this chapter.
 18 The cabinet may adopt the hearing officer's findings and recommendations or
 19 prepare written findings of fact and state the basis for its decision which shall
 20 become part of the record of the proceedings.

21 (7)~~[(5)]~~ All decisions revoking, suspending, modifying or denying licenses shall be
 22 made by the cabinet in writing. The cabinet shall notify the applicant or licensee of
 23 the decision.

24 (8)~~[(6)]~~ The decision of the cabinet shall be final for purposes of judicial appeal upon
 25 notice of the cabinet's decision.

26 ➔Section 17. KRS 216B.131 is amended to read as follows:

27 (1) All moneys derived from applicants seeking certificates of need or licenses or from

1 any other sources connected with this chapter shall be promptly paid over to the
 2 State Treasurer, who shall deposit such moneys in a special fund which, in addition
 3 to appropriated funds, shall be used to carry out the purposes of this chapter and for
 4 no other purpose.

5 (2) Any fine imposed for the violation of this chapter shall, when collected, be paid into
 6 the Kentucky *civil penalty*~~[nursing incentive scholarship]~~ fund.

7 ➔Section 18. KRS 216B.450 is amended to read as follows:

8 As used in this section and KRS 216B.455 and 216B.457:

- 9 (1) "Cabinet" means the Cabinet for Health and Family Services;
- 10 (2) "Community-based" means a facility that is located in an existing residential
 11 neighborhood or community;
- 12 (3) "Freestanding" means a completely detached building or two (2) residences under
 13 one (1) roof that are clearly separate and can serve youth independently;
- 14 (4) ~~["Home like" means a residence with living space designed to accommodate the
 15 daily living needs and tasks of a family unit, with opportunity for adult child
 16 communication, shared tasks, adult-child learning, congregate meals, and family-
 17 type routines appropriate to the ages and levels of functioning of the residents;~~
- 18 (5) ~~]~~"Psychiatric residential treatment facility" means either a licensed:

19 (a) Level I community-based~~[, and home like]~~ facility with a maximum of nine
 20 (9) beds *that*~~[which]~~ provides inpatient psychiatric residential treatment to
 21 residents age six (6) to twenty-one (21) years who have an emotional
 22 disability or *serious*~~[severe]~~ emotional disability as defined in KRS 200.503,
 23 with an age range of no greater than five (5) years at the time of admission in
 24 a living unit; or

25 (b) Level II ~~[home like]~~ facility that provides twenty-four (24) hour inpatient
 26 psychiatric residential treatment and habitation to persons who:

27 1. Are ages four (4) to twenty-one (21) years, with an age range of no

1 greater than five (5) years at the time of admission to the facility;

2 2. Have a serious~~severe~~ emotional disability as defined by KRS 200.503
3 in addition to severe and persistent aggressive behaviors, intellectual
4 disability, sexually acting out behaviors, or developmental disability;
5 and

6 3. Do not meet the medical necessity criteria for an acute care hospital or a
7 psychiatric hospital and whose treatment needs cannot be met in an
8 ambulatory care setting, Level I psychiatric residential treatment facility,
9 or other less restrictive environment;

10 ~~(5)~~~~(6)~~ "Qualified mental health personnel" means a staff member who operates
11 under the supervision of a qualified mental health professional; and

12 ~~(6)~~~~(7)~~ "Qualified mental health professional" has the same meaning as in KRS
13 202A.011.

14 ➔Section 19. KRS 216B.455 is amended to read as follows:

15 (1) ~~[A certificate of need shall be required for all Level I psychiatric residential~~
16 ~~treatment facilities. The application for a certificate of need shall include formal~~
17 ~~written agreements of cooperation that identify the nature and extent of the~~
18 ~~proposed working relationship between the proposed Level I psychiatric residential~~
19 ~~treatment facility and each of the following agencies, organizations, or facilities~~
20 ~~located in the service area of the proposed facility:~~

21 ~~(a) Regional interagency council for children with emotional disability or severe~~
22 ~~emotional disability as defined in KRS 200.509;~~

23 ~~(b) Department for Community Based Services;~~

24 ~~(c) Local school districts;~~

25 ~~(d) At least one (1) psychiatric hospital; and~~

26 ~~(e) Any other agency, organization, or facility deemed appropriate by the cabinet.~~

27 ~~(2) Notwithstanding provisions for granting of a nonsubstantive review of a certificate~~

1 of need application under ~~KRS 216B.095~~, the cabinet shall review and approve the
2 nonsubstantive review of an application seeking to increase the number of beds as
3 permitted by ~~KRS 216B.450~~ if the application is submitted by an eight (8) bed or
4 sixteen (16) bed Level I psychiatric residential treatment facility licensed and
5 operating or holding an approved certificate of need on July 13, 2004. The cabinet
6 shall base its approval of expanded beds upon the Level I psychiatric residential
7 treatment facility's ability to meet standards designed by the cabinet to provide
8 stability of care. The standards shall be promulgated by the cabinet in an
9 administrative regulation in accordance with KRS Chapter 13A. An application
10 under this subsection shall not be subject to any moratorium relating to certificate of
11 need.

12 ~~(3)~~ All Level I psychiatric residential treatment facilities shall comply with the
13 licensure requirements as set forth in KRS 216B.105.

14 ~~(2)~~~~(4)~~ All Level I psychiatric residential treatment facilities shall be certified by a
15 not-for-profit~~the Joint Commission, the Council on Accreditation of Services for~~
16 ~~Families and Children, or any other~~ accrediting body with ~~comparable~~ standards
17 that are~~is~~ recognized by the state.

18 **(3) A Level I psychiatric residential treatment facility shall require a national and**
19 **state fingerprint-supported criminal records check by the Department of**
20 **Kentucky State Police and the Federal Bureau of Investigation for all employees**
21 **and volunteers who have duties that are equivalent to the duties of employees**
22 **providing direct services. The employment or volunteer services of an individual**
23 **shall be subject to the restrictions established by administrative regulations**
24 **promulgated by the cabinet to implement this section. A new criminal records**
25 **check shall be completed at least every two (2) years on each employee or**
26 **volunteer unless the employee is registered in the rap back system defined by KRS**
27 **199.011(14). Any fee charged by the cabinet, Department of Kentucky State**

1 *Police, or Federal Bureau of Investigation shall not exceed the actual cost of*
 2 *processing a request for a criminal records check and rap back service for*
 3 *ongoing status notification*⁽⁵⁾—A Level I psychiatric residential treatment facility

4 shall not be located in or on the grounds of a psychiatric hospital. More than one (1)
 5 freestanding Level I psychiatric residential treatment facility may be located on the
 6 same campus that is not in or on the grounds of a psychiatric hospital.

7 ~~(6) The total number of Level I psychiatric residential treatment facility beds shall not~~
 8 ~~exceed three hundred and fifteen (315) beds statewide.~~

9 ~~(7) (a) The Cabinet for Health and Family Services shall investigate the need for~~
 10 ~~specialty foster care and post treatment services for persons discharged from~~
 11 ~~Level I and Level II psychiatric residential treatment facilities.~~

12 ~~(b) The cabinet shall report to the Governor and the Legislative Research~~
 13 ~~Commission by August 1, 2011, detailing information on specialty~~
 14 ~~foster care and post treatment services for persons discharged from~~
 15 ~~Level I and Level II psychiatric residential treatment facilities].~~

16 ➔Section 20. KRS 216B.457 is amended to read as follows:

17 (1) ~~{A certificate of need shall be required for all Level II psychiatric residential~~
 18 ~~treatment facilities. The need criteria for the establishment of Level II psychiatric~~
 19 ~~residential treatment facilities shall be in the state health plan.~~

20 ~~(2) An application for a certificate of need for Level II psychiatric residential treatment~~
 21 ~~facilities shall not exceed fifty (50) beds. Level II facility beds may be located in a~~
 22 ~~separate part of a psychiatric hospital, a separate part of an acute care hospital, or a~~
 23 ~~Level I psychiatric residential treatment facility if the Level II beds are located on a~~
 24 ~~separate floor, in a separate wing, or in a separate building. A Level II facility shall~~
 25 ~~not refuse to admit a patient who meets the medical necessity criteria and facility~~
 26 ~~criteria for Level II facility services. Nothing in this section and KRS 216B.450 and~~
 27 ~~216B.455 shall be interpreted to prevent a psychiatric residential treatment facility~~

1 from operating both a Level I psychiatric residential treatment facility and a Level II
2 psychiatric residential treatment facility.

3 ~~(3) The application for a Level II psychiatric residential treatment facility certificate of~~
4 ~~need shall include formal written agreements of cooperation that identify the nature~~
5 ~~and extent of the proposed working relationship between the proposed Level II~~
6 ~~psychiatric residential treatment facility and each of the following agencies,~~
7 ~~organizations, or entities located in the service area of the proposed facility:~~

8 ~~(a) Regional interagency council for children with emotional disability or severe~~
9 ~~emotional disability created under KRS 200.509;~~

10 ~~(b) Community board for mental health or individuals with an intellectual~~
11 ~~disability established under KRS 210.380;~~

12 ~~(c) Department for Community Based Services;~~

13 ~~(d) Local school districts;~~

14 ~~(e) At least one (1) psychiatric hospital; and~~

15 ~~(f) Any other agency, organization, or entity deemed appropriate by the cabinet.~~

16 ~~(4) The application for a certificate of need shall include:~~

17 ~~(a) The specific number of beds proposed for each age group and the specific,~~
18 ~~specialized program to be offered;~~

19 ~~(b) An inventory of current services in the proposed service area; and~~

20 ~~(c) Clear admission and discharge criteria, including age, sex, and other~~
21 ~~limitations.~~

22 ~~(5) All Level II psychiatric residential treatment facilities shall comply with the~~
23 ~~licensure requirements as set forth in KRS 216B.105.~~

24 ~~(2)~~~~[(6)] All Level II psychiatric residential treatment facilities shall be certified by a~~
25 ~~not-for-profit~~~~the Joint Commission, the Council on Accreditation of Services for~~
26 ~~Families and Children, or any other} accrediting body with {comparable} standards~~
27 ~~that are recognized by the state{Centers for Medicare and Medicaid Services}.~~

1 ~~(3)~~~~(7)~~ A Level II psychiatric residential treatment facility shall be under the clinical
2 supervision of a qualified mental health professional with training or experience in
3 mental health treatment of children and youth.

4 ~~(4)~~~~(8)~~ Treatment services shall be provided by qualified mental health professionals
5 or qualified mental health personnel. Individual staff who will provide educational
6 programs shall meet the employment standards outlined by the Kentucky Board of
7 Education and the Education Professional Standards Board.

8 ~~(5)~~~~(9)~~ A Level II psychiatric residential treatment facility shall meet the following
9 requirements with regard to professional staff:

10 (a) A licensed psychiatrist, who is board-eligible or board-certified as a child or
11 adult psychiatrist, shall be employed or contracted to meet the treatment needs
12 of the residents and the functions that shall be performed by a psychiatrist;

13 (b) If a Level II psychiatric residential treatment facility has residents ages twelve
14 (12) and under, the licensed psychiatrist shall be a board-eligible or board-
15 certified child psychiatrist; and

16 (c) The licensed psychiatrist shall be present in the facility to provide professional
17 services to the facility's residents at least weekly.

18 ~~{(10) A Level II psychiatric residential treatment facility shall:~~

19 ~~(a) Prepare a written staffing plan that is tailored to meet the needs of the specific~~
20 ~~population of children and youth that will be admitted to the facility based on~~
21 ~~the facility's admission criteria. The written staffing plan shall include but not~~
22 ~~be limited to the following:~~

23 ~~1. Specification of the direct care per patient staffing ratio that the facility~~
24 ~~shall adhere to during waking hours and during sleeping hours;~~

25 ~~2. Delineation of the number of direct care staff per patient, including the~~
26 ~~types of staff and the mix and qualifications of qualified mental health~~
27 ~~professionals and qualified mental health personnel, that shall provide~~

- 1 direct care and will comprise the facility's per patient staffing ratio;
- 2 3.— Specification of appropriate qualifications for individuals included in the
- 3 per patient staffing ratio by job description, education, training, and
- 4 experience;
- 5 4.— Provision for ensuring compliance with its written staffing plan, and
- 6 specification of the circumstances under which the facility may deviate
- 7 from the per patient staffing ratio due to patient emergencies, changes in
- 8 patient acuity, or changes in patient census; and
- 9 5.— Provision for submission of the written staffing plan to the cabinet for
- 10 approval as part of the facility's application for initial licensure.
- 11 — ~~No initial license to operate as a Level II psychiatric residential treatment~~
- 12 ~~facility shall be granted until the cabinet has approved the facility's written~~
- 13 ~~staffing plan. Once a facility is licensed, it shall comply with its approved~~
- 14 ~~written staffing plan and, if the facility desires to change its approved per-~~
- 15 ~~patient staffing ratio, it shall submit a revised plan and have the plan approved~~
- 16 ~~by the cabinet prior to implementation of the change;~~
- 17 (b) ~~Require full-time professional and direct care staff to meet the continuing~~
- 18 ~~education requirements of their profession or be provided with forty (40)~~
- 19 ~~hours per year of in-service training; and~~
- 20 (c) ~~Develop and implement a training plan for all staff that includes but is not~~
- 21 ~~limited to the following:~~
- 22 1.— Behavior management procedures and techniques;
- 23 2.— Physical management procedures and techniques;
- 24 3.— First aid;
- 25 4.— Cardiopulmonary resuscitation;
- 26 5.— Infection control procedures;
- 27 6.— Child and adolescent growth and development;

1 7.— Training specific to the specialized nature of the facility;

2 8.— Emergency and safety procedures; and

3 9.— Detection and reporting of child abuse and neglect.

4 ~~(11)~~**(6)** A Level II psychiatric residential treatment facility shall require a **national**
5 **and state fingerprint-supported** criminal records check **by the Department of**
6 **Kentucky State Police and the Federal Bureau of Investigation for** ~~to be~~
7 ~~completed on~~ all employees and volunteers **who have duties that are equivalent to**
8 **the duties of employees providing direct services.** The employment or volunteer
9 services of an individual shall be **subject to the restrictions established by**
10 **administrative regulations promulgated by the cabinet to implement this**
11 **section** ~~[governed by KRS 17.165, with regard to a criminal records check].~~ A new
12 criminal records check shall be completed at least every two (2) years on each
13 employee or volunteer **unless the employee is registered in the rap back system**
14 **defined by KRS 199.011(14).** **Any fee charged by the cabinet, Department of**
15 **Kentucky State Police, or Federal Bureau of Investigation shall not exceed the**
16 **actual cost of processing a request for a criminal records check and rap back**
17 **service for ongoing status notification.**

18 ~~(7)~~~~(12)~~ (a) — Any employee or volunteer who has committed or is charged with the
19 commission of a violent offense as specified in KRS 439.3401, a sex crime
20 specified in KRS 17.500, or a criminal offense against a victim who is a minor
21 as specified in KRS 17.500 shall be immediately removed from contact with a
22 child within the residential treatment center until the employee or volunteer is
23 cleared of the charge.

24 (b) — An employee or volunteer under indictment, legally charged with felonious
25 conduct, or subject to a cabinet investigation shall be immediately removed
26 from contact with a child.

27 (c) — The employee or volunteer shall not be allowed to work with the child until a

1 ~~prevention plan has been written and approved by the cabinet, the person is~~
2 ~~cleared of the charge, or a cabinet investigation reveals an unsubstantiated~~
3 ~~finding, if the charge resulted from an allegation of child abuse, neglect, or~~
4 ~~exploitation.~~

5 ~~(d) Each employee or volunteer shall submit to a check of the central registry. An~~
6 ~~individual listed on the central registry shall not be a volunteer at or be~~
7 ~~employed by a Level II psychiatric residential treatment facility.~~

8 ~~(e) Any employee or volunteer removed from contact with a child pursuant to this~~
9 ~~subsection may, at the discretion of the employer, be terminated, reassigned to~~
10 ~~a position involving no contact with a child, or placed on administrative leave~~
11 ~~with pay during the pendency of the investigation or proceeding.~~

12 ~~(13)~~ An initial treatment plan of care shall be developed and implemented for each
13 resident, and the plan of care shall be based on initial history and ongoing
14 assessment of the resident's needs and strengths, with an emphasis on active
15 treatment, transition planning, and after-care services, and shall be completed
16 within seventy-two (72) hours of admission.

17 ~~(8)~~~~(14)~~ A comprehensive treatment plan of care shall be developed and implemented
18 for each resident, and the plan of care shall be based on initial history and ongoing
19 assessment of the resident's needs and strengths, with an emphasis on active
20 treatment, transition planning, and after-care services, and shall be completed
21 within ten (10) calendar days of admission.

22 ~~(9)~~~~(15)~~ A review of the treatment plan of care shall occur at least every thirty (30)
23 days following the first ten (10) days of treatment and shall include the following
24 documentation:

25 (a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or
26 conservator;

27 (b) An assessment of progress toward each treatment goal and objective with

1 revisions as indicated; and

2 (c) A statement of justification for the level of services needed, including
3 suitability for treatment in a less-restrictive environment and continued
4 services.

5 ~~(10)~~~~(16)~~ A Level II psychiatric residential treatment facility shall provide or arrange for
6 the provision of qualified dental, medical, nursing, and pharmaceutical care for
7 residents. The resident's parent, guardian, legal custodian, or conservator may
8 choose a professional for nonemergency services.

9 ~~(11)~~~~(17)~~ A Level II psychiatric residential treatment facility shall ensure that
10 opportunities are provided for recreational activities that are appropriate and
11 adapted to the needs, interests, and ages of the residents.

12 ~~(12)~~~~(18)~~ A Level II psychiatric residential treatment facility shall assist residents in the
13 independent exercise of health, hygiene, and grooming practices.

14 ~~(13)~~~~(19)~~ A Level II psychiatric residential treatment facility shall assist each resident in
15 securing an adequate allowance of personally owned, individualized, clean, and
16 seasonal clothes that are the correct size.

17 ~~(14)~~~~(20)~~ A Level II psychiatric residential treatment facility shall assist, educate, and
18 encourage each resident in the use of dental, physical, or prosthetic appliances or
19 devices and visual or hearing aids.

20 ~~(15)~~~~(21)~~ The cabinet shall promulgate administrative regulations that include but are not
21 limited to the following:

22 (a) Establishing requirements for tuberculosis skin testing for staff of a Level II
23 psychiatric residential treatment facility;

24 (b) Ensuring that accurate, timely, and complete resident assessments are
25 conducted for each resident of a Level II psychiatric residential treatment
26 facility;

27 (c) Ensuring that accurate, timely, and complete documentation of the

1 implementation of a resident's treatment plan of care occurs for each resident
2 of a Level II psychiatric residential treatment facility;

3 (d) Ensuring that an accurate, timely, and complete individual record is
4 maintained for each resident of a Level II psychiatric residential treatment
5 facility;

6 (e) Ensuring that an accurate, timely, and complete physical examination is
7 conducted for each resident of a Level II psychiatric residential treatment
8 facility;

9 (f) Ensuring accurate, timely, and complete access to emergency services is
10 available for each resident of a Level II psychiatric residential treatment
11 facility; and

12 (g) Ensuring that there is accurate, timely, and complete administration of
13 medications for each resident of a Level II psychiatric residential treatment
14 facility.

15 ~~(16)~~⁽²²⁾ The cabinet shall ~~[, within ninety (90) days of July 15, 2010,]~~ promulgate
16 administrative regulations in accordance with KRS Chapter 13A to implement this
17 section and KRS 216B.450 and 216B.455. When promulgating the administrative
18 regulations, the cabinet shall not consider only staffing ratios when evaluating the
19 written staffing plan of an applicant, but shall consider the applicant's overall ability
20 to provide for the needs of patients.

21 ~~(17)~~⁽²³⁾ The cabinet shall report upon request by the Legislative Research
22 Commission ~~[, no later than August 1 of each year, to the Interim Joint Committee~~
23 ~~on Health and Welfare]~~ regarding the implementation of this section and KRS
24 216B.450 and 216B.455. The report shall include but not be limited to information
25 relating to resident outcomes, such as lengths of stay in the facility, locations
26 residents were discharged to, and whether residents were readmitted to a Level II
27 psychiatric residential treatment facility within a twelve (12) month period.

1 ➔Section 21. KRS 218A.240 is amended to read as follows:

- 2 (1) All police officers and deputy sheriffs directly employed full-time by state, county,
3 city, urban-county, or consolidated local governments, the Department of Kentucky
4 State Police, the Cabinet for Health and Family Services, their officers and agents,
5 and of all city, county, and Commonwealth's attorneys, and the Attorney General,
6 within their respective jurisdictions, shall enforce all provisions of this chapter and
7 cooperate with all agencies charged with the enforcement of the laws of the United
8 States, of this state, and of all other states relating to controlled substances.
- 9 (2) For the purpose of enforcing the provisions of this chapter, the designated agents of
10 the Cabinet for Health and Family Services shall have the full power and authority
11 of peace officers in this state, including the power of arrest and the authority to bear
12 arms, and shall have the power and authority to administer oaths; to enter upon
13 premises at all times for the purpose of making inspections; to seize evidence; to
14 interrogate all persons; to require the production of prescriptions, of books, papers,
15 documents, or other evidence; to employ special investigators; and to expend funds
16 for the purpose of obtaining evidence and to use data obtained under KRS
17 218A.202 in any administrative proceeding before the cabinet.
- 18 (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same
19 powers of inspection and enforcement as the Cabinet for Health and Family
20 Services.
- 21 (4) Designated agents of the Cabinet for Health and Family Services and the Kentucky
22 Board of Pharmacy are empowered to remove from the files of a pharmacy or the
23 custodian of records for that pharmacy any controlled substance prescription or
24 other controlled substance record upon tendering a receipt. The receipt shall be
25 sufficiently detailed to accurately identify the record. A receipt for the record shall
26 be a defense to a charge of failure to maintain the record.
- 27 (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any

1 law enforcement authority may maintain, in its own name, an action to restrain or
2 enjoin any violation of this chapter or to forfeit any property subject to forfeiture
3 under KRS 218A.410, irrespective of whether the owner of the property has been
4 charged with or convicted of any offense under this chapter.

5 (a) Any civil action against any person brought pursuant to this section may be
6 instituted in the Circuit Court in any county in which the person resides, in
7 which any property owned by the person and subject to forfeiture is found, or
8 in which the person has violated any provision of this chapter.

9 (b) A final judgment rendered in favor of the Commonwealth in any criminal
10 proceeding brought under this chapter shall estop the defendant from denying
11 the essential allegations of the criminal offense in any subsequent civil
12 proceeding brought pursuant to this section.

13 (c) The prevailing party in any civil proceeding brought pursuant to this section
14 shall recover his or her costs, including a reasonable attorney's fee.

15 (d) Distribution of funds under this section shall be made in the same manner as
16 in KRS 218A.420, except that if the Commonwealth's attorney has not
17 initiated the forfeiture action under this section, his or her percentage of the
18 funds shall go to the agency initiating the forfeiture action.

19 (6) The Cabinet for Health and Family Services shall make or cause to be made
20 examinations of samples secured under the provisions of this chapter to determine
21 whether any provision has been violated.

22 (7) (a) The Cabinet for Health and Family Services shall proactively use the data
23 compiled in the electronic system created in KRS 218A.202 for investigations,
24 research, statistical analysis, and educational purposes and shall proactively
25 identify trends in controlled substance usage and other potential problem
26 areas. Only cabinet personnel who have undergone training for the electronic
27 system and who have been approved to use the system shall be authorized

1 access to the data and reports under this subsection. The cabinet shall notify a
2 state licensing board listed in KRS 218A.205 if a report or analysis conducted
3 under this subsection indicates that further investigation about improper,
4 inappropriate or illegal prescribing or dispensing may be necessary by the
5 board. The board shall consider each report and may, after giving due
6 consideration to areas of practice, specialties, board certifications, and
7 appropriate standards of care, request and receive a follow-up report or
8 analysis containing relevant information as to the prescriber or dispenser and
9 his or her patients.

10 (b) The cabinet shall develop criteria, in collaboration with the Board of Medical
11 Licensure, the Board of Nursing, the Office of Drug Control Policy, and the
12 Board of Pharmacy, to be used to generate public trend reports from the data
13 obtained by the system. Meetings at which the criteria are developed shall be
14 meetings, as defined in KRS 61.805, that comply with the open meetings
15 laws, KRS 61.805 to 61.850. The cabinet shall, on a quarterly basis, publish
16 trend reports from the data obtained by the system. Except as provided in
17 subsection (8) of this section, these trend reports shall not identify an
18 individual prescriber, dispenser, or patient. Peace officers authorized to
19 receive data under KRS 218A.202 may request trend reports not specifically
20 published pursuant to this paragraph except that the report shall not identify an
21 individual prescriber, dispenser, or patient.

22 (8) If the cabinet deems it to be necessary and appropriate, upon the request of a state
23 licensing board listed in KRS 218A.205, the cabinet shall provide the requesting
24 board with the identity of prescribers, dispensers, and patients used to compile a
25 specific trend report.

26 (9) Any hospital or other health care facility may petition the cabinet to review data
27 from the electronic system specified in KRS 218A.202 as it relates to employees of

1 that facility to determine if inappropriate prescribing or dispensing practices are
 2 occurring. The cabinet may initiate any investigation in such cases as he or she
 3 determines is appropriate, and may request the assistance from the hospitals or
 4 health care facilities in the investigation.

5 **(10) If the office or clinic of a practitioner is subject to emergency closure or other**
 6 **enforcement action resulting in a suspension or termination of the practitioner's**
 7 **controlled substance prescribing privileges, the Cabinet for Health and Family**
 8 **Services or applicable professional licensing board may use data from the**
 9 **electronic system established by KRS 218A.202 to issue notification as soon as**
 10 **practicable to the practitioner's patients to help prevent the disruption of medical**
 11 **treatment and promote continuity of care.**

12 ➔Section 22. KRS 304.17-312 is amended to read as follows:

13 As used in KRS 304.17-313, 304.18-037, 304.32-280, and 304.38-210:

14 (1) "Home health agency" means a public agency or private organization, or a
 15 subdivision of such an agency or organization ~~that~~^{which} is licensed as a home
 16 health agency by the ~~Cabinet for Health and Family Services~~^{Cabinet for Health and Family Services}~~[Kentucky Health~~
 17 ~~Facilities and Health Services Certificate of Need and Licensure Board]~~ and is
 18 certified to participate as a home health agency under Title XVIII of the Social
 19 Security Act.

20 (2) "Home health care" means the care and treatment provided by a home health agency
 21 ~~that~~^{which} is prescribed and supervised by a physician. The care and treatment
 22 shall include but not be limited to one (1) or more of the following:

- 23 (a) Part-time or intermittent skilled nursing services provided by an advanced
 24 practice registered nurse, registered nurse, or licensed practical nurse;
- 25 (b) Physical, respiratory, occupational, or speech therapy;
- 26 (c) Home health aide services;
- 27 (d) Medical appliances and equipment, drugs and medication, and laboratory

1 services, to the extent that such items and services would have been covered
2 under the policy if the covered person had been in a hospital.

- 3 (3) "Home health aide services" means those services provided by a home health aide
4 and supervised by a registered nurse ~~that~~^{which} are directed towards the personal
5 care of the patient. Such services shall include but not be limited to the following:
- 6 (a) Helping the patient with bath, care of mouth, skin, and hair;
 - 7 (b) Helping the patient to the bathroom or in using a bedpan;
 - 8 (c) Helping the patient in and out of bed and assisting with ambulation;
 - 9 (d) Helping the patient with prescribed exercises ~~that~~^{which} the patient and
10 home health aide have been taught by appropriate professional personnel;
 - 11 (e) Assisting with medication ordinarily self-administered that has been
12 specifically ordered by a physician;
 - 13 (f) Performing incidental household services as are essential to the patient's
14 health care at home provided that such services would have been performed if
15 the patient was in a hospital or skilled nursing facility; and
 - 16 (g) Reporting to the professional nurse supervisor changes in the patient's
17 condition or family situation.

18 ➔Section 23. KRS 314.027 is amended to read as follows:

- 19 (1) Funding for the Kentucky nursing incentive scholarship fund shall be ~~supplied~~
20 ~~partly by funds received from penalties and fines, to include, but not be limited to,~~
21 ~~certificate of need penalties assessed on hospitals, nursing facilities, nursing homes,~~
22 ~~personal care homes, and family care homes under the provisions of KRS 216.560~~
23 ~~and 216B.131(2).~~

- 24 ~~(2) Additional funding shall be~~ provided by an assessment of five dollars (\$5) to be
25 added to each nurse licensure renewal application fee payable to the board, proceeds
26 of which shall be annually allocated to the Kentucky nursing incentive scholarship
27 fund.

1 ~~(2)~~~~(3)~~ The board may cancel any contract between it and any applicant or recipient
2 upon failure by the applicant or recipient to meet requirements of KRS 314.025 to
3 314.027 or board administrative regulations. Failure to complete the terms of the
4 contract shall subject the applicant to legal action for the recovery of all assistance
5 provided, together with attorney fees and interest at a compound rate of eight
6 percent (8%) from the date of disbursement from the Kentucky nursing incentive
7 scholarship fund.

8 ➔Section 24. The following KRS sections are repealed:

9 216B.021 Authorization for two 120-bed nursing homes in western and eastern
10 Kentucky.

11 216B.022 Establishment of nursing facility beds under pilot program for post-acute
12 transitional care dependent upon long-term care bed need calculations for county in
13 state health plan -- Sunset.

14 216B.182 Conversion of licensed nursing home beds to licensed intermediate care
15 facility beds between July 1, 2004, and September 1, 2005.