

1 AN ACT relating to long-term care administrators.

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

3 ➔Section 1. KRS 216A.070 is amended to read as follows:

4 (1) The board shall:

5 (a) Develop, impose, and enforce standards which must be met by individuals in
6 order to receive a license as a long-term care administrator, which standards
7 shall be designed to ensure that long-term care administrators will be
8 individuals who are of good character and are otherwise suitable, and who, by
9 training or experience in the field of institutional administration, are qualified
10 to serve as nursing home administrators;

11 (b) Develop and apply appropriate techniques, including examinations and
12 investigations, for determining whether an individual meets the standards;

13 (c) Issue licenses to individuals determined, after application of appropriate
14 techniques, to meet established standards;

15 (d) Establish and carry out procedures designed to ensure that individuals licensed
16 as long-term care administrators will, during any period that they serve as
17 such, comply with the requirements of the standards;

18 (e) Receive, investigate, and take appropriate action with respect to any charge or
19 complaint filed with the board to the effect that any individual licensed as a
20 nursing home administrator has failed to comply with the requirements of the
21 standards; and

22 (f) Apply commensurate disciplinary action, following a hearing pursuant to KRS
23 Chapter 13B, including permanent license revocation, suspension, or
24 placement of probationary conditions on the licensee, issuance of a fine not to
25 exceed two thousand dollars (\$2,000) per violation, or admonishing the
26 licensee.

27 (2) The board or any committee or member thereof or any hearing officer designated by

1 the board, acting in an official capacity, shall have the authority to conduct
 2 administrative hearings in accordance with KRS Chapter 13B concerning all
 3 matters within the jurisdiction of the board.

4 (3) The board shall also have the authority to promulgate administrative regulations
 5 necessary for the proper performance of its duties, and to take other actions
 6 necessary to enable the state to meet the requirements set forth in Section 1908 of
 7 the Social Security Act, the federal rules and regulations promulgated thereunder,
 8 and other pertinent federal authority or amendment thereto.

9 (4) The board may, when emergency conditions warrant, as determined by the board,
 10 authorize the issuance of a temporary permit to an individual to practice the art of
 11 long-term care administration if it finds the authorization will not endanger the
 12 health and safety of the occupants of the licensed long-term care facility. A
 13 temporary permit shall be valid for a period determined by the board not to exceed
 14 nine (9)~~six (6)~~ months and shall not be renewed. The fee for a temporary permit
 15 shall be determined by regulations of the board.

16 ➔SECTION 2. A NEW SECTION OF KRS 194A.700 TO 194A.729 IS
 17 CREATED TO READ AS FOLLOWS:

18 **(1) Except as provided by subsection (2) of this section, an assisted-living community**
 19 **shall not be certified or have a certification renewed if it is owned, managed, or**
 20 **operated by, or employs any person, who:**

21 **(a) Has been convicted of a felony offense related to:**

22 **1. KRS Chapter 209;**

23 **2. KRS Chapter 218A;**

24 **3. KRS 507.020, 507.030, or 507.040;**

25 **4. KRS 508.010, 508.020, 508.025, 508.030, or 508.032;**

26 **5. KRS Chapter 509;**

27 **6. KRS Chapter 510;**

- 1 7. KRS Chapter 511;
- 2 8. KRS Chapter 513;
- 3 9. KRS 514.030;
- 4 10. KRS Chapter 530;
- 5 11. KRS Chapter 531;
- 6 12. A criminal statute of the United States or another state similar to
- 7 subparagraphs 1. to 11. of this paragraph; or
- 8 13. A violation of the uniform code of military justice or military
- 9 regulation similar to subparagraphs 1. to 11. of this paragraph, which
- 10 has caused the person to be discharged from the Armed Forces of the
- 11 United States;
- 12 (b) Has a substantiated finding of child abuse or neglect by the cabinet as
- 13 documented by the Child Abuse/Neglect Central Registry maintained by the
- 14 cabinet;
- 15 (c) Has a validated substantiated finding of adult abuse, neglect, or exploitation
- 16 by the cabinet as documented by the Adult Caregiver Misconduct Registry
- 17 maintained by the cabinet; or
- 18 (d) Is listed on the Kentucky Nurse Aide Abuse Registry.
- 19 (2) A person who has received a pardon for an offense specified in subsection (1)(a)
- 20 of this section or has had the record of such an offense expunged may be an
- 21 owner, manager, operator, or employee.
- 22 (3) An assisted-living community that is certified as of July 1, 2020, and is owned by
- 23 a person who is prohibited from being certified or having a certification renewed
- 24 under subsection (1) of this section, may continue to operate if the person listed
- 25 as owner in the certification application in existence as of July 1, 2020, does not
- 26 have contact or potential contact with any client on the assisted-living
- 27 community's property regardless of purpose.

1 ➔Section 3. KRS 194A.700 is amended to read as follows:

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

3 (1) "Activities of daily living" means normal daily activities, including bathing,
4 dressing, grooming, transferring, toileting, and eating;

5 (2) "Assistance with activities of daily living and instrumental activities of daily living"
6 means any assistance provided by the assisted-living community staff with the
7 client having at least minimal ability to direct by communication and ~~verbally~~
8 ~~direct or~~ physically participate in the activity with which assistance is being
9 provided;

10 (3) "Assistance with self-administration of medication," unless subject to more
11 restrictive provisions in an assisted-living community's policies that are
12 communicated in writing to clients and prospective clients, means:

13 (a) Assistance with medication that is prepared or directed by the client, the
14 client's designated representative, or a licensed health care professional who is
15 not the owner, manager, or employee of the assisted-living community. The
16 medication shall:

17 1. Except for ointments, be preset in a medication organizer or be in a
18 single dose unit;
19 2. Include the client's name on the medication organizer or container in
20 which the single dose unit is stored; and
21 3. Be stored in a manner requested in writing by the client or the client's
22 designated representative ~~and permitted by the assisted living~~
23 ~~community's policies~~;

24 (b) Assistance by an assisted-living community staff person, which includes:

25 1. Reminding a client when to take medications and observing to ensure
26 that the client takes the medication as directed;

27 2. Handing the client's medication to the client, or if it is difficult for the

- 1 client or the client requests assistance, opening the unit dose or
2 medication organizer, removing the medication from a medication
3 organizer or unit dose container, closing the medication organizer for the
4 client, placing the dose in a container, and placing the medication or the
5 container in the clients hand;
- 6 3. Steadying or guiding a client's hand while the client is self-administering
7 medications; or
- 8 4. Applying over-the-counter topical ointments and lotions;
- 9 (c) Making available the means of communication by telephone, facsimile, or
10 other electronic device with a licensed health care professional and pharmacy
11 regarding a prescription for medication;
- 12 (d) At the request of the client or the client's designated representative, facilitating
13 the filling of a preset medication container by a designated representative or
14 licensed health care professional who is not the owner, manager, or employee
15 of the assisted living community; and
- 16 (e) None of the following:
- 17 1. Instilling eye, ear, or nasal drops;
- 18 2. Mixing compounding, converting, or calculating medication doses;
- 19 3. Preparing syringes for injection or administering medications by any
20 injection method;
- 21 4. Administrating medications through intermittent positive pressure
22 breathing machines or a nebulizer;
- 23 5. Administrating medications by way of a tube inserted in a cavity of the
24 body;
- 25 6. Administrating parenteral preparations;
- 26 7. Administrating irrigations or debriding agents used in the treatment of a
27 skin condition; or

- 1 8. Administrating rectal, urethral, or vaginal preparations;
- 2 (4) "Assisted-living community" means a series of living units on the same site
3 certified under KRS 194A.707 to provide services for five (5) or more adult persons
4 not related within the third degree of consanguinity to the owner or manager;
- 5 (5) "Client," "resident," or "tenant" means an adult person who has entered into a lease
6 agreement with an assisted-living community;
- 7 (6) "Danger" means:
- 8 (a) Physical harm or threat of physical harm to one's self or others; or
- 9 (b) *A condition that the department finds exists on or within the premises of the*
10 *assisted-living community, based on factual circumstances, that threatens*
11 *imminent harm to a client's health or physical safety and for which a plan*
12 *of correction has not been submitted and approved by the department as*
13 *required;*
- 14 (7) "Department" means the Department for Aging and Independent Living;
- 15 (8) "Health services" has the same meaning as in KRS 216B.015;
- 16 (9) "Instrumental activities of daily living" means activities to support independent
17 living including but not limited to housekeeping, shopping, laundry, chores,
18 transportation, and clerical assistance;
- 19 (10) "Living unit" means a portion of an assisted-living community occupied as the
20 living quarters of a client under a lease agreement;
- 21 (11) "Mobile nonambulatory" means unable to walk without assistance, but able to move
22 from place to place with the use of a device including but not limited to a walker,
23 crutches, or wheelchair;
- 24 (12) "Plan of correction" means a written response from the assisted-living community
25 addressing an instance cited in the statement of noncompliance;
- 26 (13) "Statement of danger" means a written statement issued by the department detailing
27 an instance where a client is a danger *or is in danger due to a condition that exists*

1 at the assisted-living community; and

2 (14) "Statement of noncompliance" means a written statement issued by the department
3 detailing an instance when the department considers the assisted-living community
4 to have been in violation of a statutory or regulatory requirement.

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

6 (1) (a) The Cabinet for Health and Family Services shall establish by the
7 promulgation of administrative ~~regulations~~^{regulation} under KRS Chapter
8 13A, an initial and annual certification ~~renewal~~^{review} process for assisted-
9 living communities. This administrative regulation shall establish procedures
10 related to applying for, reviewing, renewing, and approving, denying, or
11 revoking certification.

12 (b) A denial or revocation of certification may be appealed, and upon appeal an
13 administrative hearing shall be conducted within ninety (90) days of the
14 date the appeal is filed if received within the required time limit. An
15 assisted-living community that has adhered to all time frames shall be able
16 to operate during the appeal process and until a hearing officer has
17 rendered a final decision. The administrative hearing shall be conducted as
18 governed by KRS Chapter 13B.

19 (c) If an appeal is not requested or is not filed within the required time limit,
20 the notice of denial or revocation issued by the cabinet shall become final
21 and may be appealed to the Circuit Court within thirty (30) days of the date
22 it becomes final~~[, as well as the conduct of hearings upon appeals as governed~~
23 ~~by KRS Chapter 13B].~~

24 (2) An on-site visit of an assisted-living community shall be conducted by the cabinet:

25 (a) As part of the initial certification review process; and

26 (b) On an annual~~[a biennial]~~ basis as part of the certification ~~renewal~~^{review}
27 process~~[if during or since the previous certification review an assisted-living~~

- 1 ~~community has not received:~~
- 2 ~~1.— Any statement of danger, unless withdrawn by the cabinet; or~~
- 3 ~~2.— A finding substantiated by the cabinet that the assisted living community~~
- 4 ~~delivered a health service; and~~
- 5 ~~(c)— Within one (1) year of the date of the previous certification review if during or~~
- 6 ~~since the last certification review an assisted living community has received:~~
- 7 ~~1.— Any statement of danger that was not withdrawn by the cabinet; or~~
- 8 ~~2.— A finding substantiated by the cabinet that the assisted living community~~
- 9 ~~delivered a health service].~~
- 10 (3) No business shall market its service as an assisted-living community unless it has:
- 11 (a) Filed a current application for the business to be certified by the department as
- 12 an assisted-living community; or
- 13 (b) Received certification by the department as an assisted-living community.
- 14 (4) No business that has been denied **renewal** or had its certification revoked shall
- 15 operate or market its service as an assisted-living community unless it has:
- 16 (a) Filed a current application for the business to be certified **or have certification**
- 17 **renewed** by the department as an assisted-living community; and
- 18 (b) Received certification as an assisted-living community from the department.
- 19 Revocation of certification may be grounds for the department to not
- 20 **renew**~~[reissue]~~ certification ~~{for one (1) year}~~ if ownership remains
- 21 substantially the same.
- 22 (5) No business shall operate as an assisted-living community unless its owner or
- 23 manager has:
- 24 (a) Filed a current application for the business to be certified **or for certification**
- 25 **renewal** as an assisted-living community by the department; and
- 26 (b) Received certification as an assisted-living community from the department.
- 27 (6) By September 1 of each year, each assisted-living community certified pursuant to

1 this chapter may provide residents with educational information or education
2 opportunities on influenza disease.

3 (7) The department shall determine the feasibility of recognizing accreditation by other
4 organizations in lieu of certification from the department.

5 (8) Individuals designated by the department to conduct certification reviews shall have
6 the skills, training, experience, and ongoing education to perform certification
7 reviews.

8 (9) The cabinet may promulgate administrative regulations to establish an assisted-
9 living community certification and renewal fee that shall not exceed costs of the
10 program to the cabinet, to be assessed upon receipt of an application for
11 certification. The department shall submit a breakdown of fees assessed and costs
12 incurred for conducting certification and renewal reviews upon request.

13 (10) The department shall make findings from certification reviews conducted during the
14 prior twelve (12) months available to any interested person.

15 (11) Notwithstanding any provision of law to the contrary, the department may request
16 any additional information from an assisted-living community or conduct additional
17 on-site visits to ensure compliance with the provisions of KRS 194A.700 to
18 194A.729.

19 (12) Failure to follow an assisted-living community's policies, practices, and procedures
20 shall not result in a finding of noncompliance unless the assisted-living community
21 is out of compliance with a related requirement under KRS 194A.700 to 194A.729.

22 ➔Section 5. KRS 194A.717 is amended to read as follows:

23 (1) Staffing in an assisted-living community shall be sufficient in number and
24 qualification to meet the twenty-four (24) hour ~~schedule~~ needs of each client
25 pursuant to the lease agreement and the required functional needs assessment for
26 each client.

27 (2) At least one (1) awake staff member shall be on site at all times and shall not be

1 *shared with another level of care during the shift being worked at the assisted-*
2 *living community.*

3 (3) An assisted-living community shall have a designated manager who is at least
4 twenty-one (21) years of age, has at least a high school diploma or a High School
5 Equivalency Diploma, and has demonstrated management or administrative ability
6 to maintain the daily operations.

7 (4) No employee who has an active communicable disease reportable to the Department
8 for Public Health shall be permitted to work in an assisted-living community if the
9 employee is a danger to the clients or other employees.

10 ➔Section 6. KRS 194A.723 is amended to read as follows:

11 Any business that operates or markets its services as an assisted-living community
12 without filing a current application with the department or receiving certification by the
13 department may be fined up to five hundred dollars (\$500) per day. *In addition, the*
14 *cabinet may initiate injunctive relief in the Circuit Court to enforce KRS 194A.700 to*
15 *194A.729 or terminate operation of an assisted-living community if that assisted-living*
16 *community continues to operate or market its services after the cabinet's notice of*
17 *revocation or denial of renewal of certification has become final.*