

1 AN ACT relating to minimum staffing requirements for long-term care facilities.

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

3 ➔SECTION 1. The General Assembly hereby finds and declares that:

4 (1) Long-term care facilities have an insufficient number of direct-care staff,
5 including nurse aides, registered nurses, and licensed practical nurses;

6 (2) Approximately thirty-seven states have implemented staffing requirements
7 that are more stringent than the federal staffing standards;

8 (3) Currently, Kentucky follows the federal staffing standards, which require one
9 registered nurse on duty for eight consecutive hours per day for seven days per week and
10 one registered nurse or licensed practical nurse on duty for twenty-four hours per day for
11 seven days a week, but Kentucky does not have staffing requirements in long-term care
12 facilities that go beyond these requirements;

13 (4) Federal staffing standards do not require a minimum level of staff that are
14 nurse aides;

15 (5) Having too few nurse aides compromises patient safety and places residents at
16 risk for health conditions and injuries, including but not limited to bedsores, dehydration,
17 malnutrition, and broken bones from falls;

18 (6) Kentucky can improve the safety of residents of long-term care facilities by
19 requiring a specified staff-to-resident ratio that exceeds the federal minimum staffing
20 standards; and

21 (7) It is in the best interests of the citizens of the Commonwealth for the General
22 Assembly to require long-term care facilities to maintain a specified staff-to-resident ratio
23 that exceeds the federal staffing standards and improves access to better care to patients
24 in need of long-term care services.

25 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO
26 READ AS FOLLOWS:

27 **(1) For the purposes of this section, "long-term care facility" or "facility" means a**

1 long-term care facility as defined in KRS 216.510 excluding intermediate care
2 facilities for individuals with intellectual disabilities, personal care homes, family
3 care homes, and institutions for the treatment of mental illness.

4 (2) For the purposes of this section, "direct-care" means duties that include caring
5 for residents as opposed to administrative duties such as office work.

6 (3) The Cabinet for Health and Family Services shall implement a system that shall
7 include but not be limited to the following staff-to-resident ratios as a condition
8 of licensure or relicensure for long-term care facilities:

9 (a) On and after July 30, 2020, a long-term care facility shall maintain a ratio
10 of unlicensed nursing personnel to facility residents of no fewer than:

11 1. One (1) nurse aide to nine (9) residents at all times during the day
12 shift;

13 2. One (1) nurse aide to ten (10) residents at all times during the evening
14 shift; and

15 3. One (1) nurse aide to nineteen (19) residents at all times during the
16 night shift;

17 (b) On and after July 30, 2020, a long-term care facility shall maintain a ratio
18 of direct-care registered nurses or licensed practical nurses of no fewer
19 than:

20 1. One (1) nurse to twenty-one (21) residents at all times during the day
21 shift;

22 2. One (1) nurse to twenty-nine (29) residents at all times during the
23 evening shift; and

24 3. One (1) nurse to thirty-two (32) residents at all times during the night
25 shift;

26 (c) On and after July 30, 2020, long-term care facilities with seventy-five (75)
27 or more beds shall employ a registered nurse supervisor during the day and

1 evening shifts, in addition to the staff required under paragraphs (a) and (b)
2 of this subsection;

3 (d) On and after July 30, 2020, long-term care facilities with one hundred (100)
4 or more beds shall employ the following staff, in addition to the staff
5 required under paragraphs (a), (b), and (c) of this subsection:

6 1. A registered nurse supervisor during the night shift;

7 2. A full-time assistant director of nursing; and

8 3. A full-time director of education;

9 (e) All minimum staffing ratios in paragraphs (a) and (b) of this subsection
10 shall be computed on the basis of a weekly average. For the purpose of this
11 section, a week is defined as the days Sunday through Saturday; and

12 (f) Registered nurses or licensed practical nurses may be used to comply with
13 the minimum staffing requirements for nurse aides in paragraph (a) of this
14 subsection if:

15 1. The minimum staffing requirements for registered nurses or licensed
16 practical nurses in paragraph (b) of this subsection also are
17 maintained at the facility; and

18 2. The registered nurses or licensed practical nurses are performing the
19 duties of a nurse aide.

20 (4) A facility employee designated as a member of the nursing staff shall not be
21 required to provide non-nursing services, including but not limited to food
22 preparation, laundry, and maintenance services, except as necessary to maintain
23 a safe and sanitary environment. Persons providing non-nursing services shall
24 not be counted in determining the staffing ratios required by this section.

25 (5) A long-term care facility that has failed to comply with the minimum staffing
26 requirements under this section for two (2) consecutive days shall be prohibited
27 from accepting new admissions of residents until the facility has achieved the

1 required staffing for a period of six (6) consecutive days. The Cabinet for Health
 2 and Family Services may establish exceptions for absences due to weather
 3 emergencies or other similar events beyond the control of the facility. A resident
 4 of a long-term care facility who returns after an absence from the facility for the
 5 purpose of receiving medical care at a separate location or after a leave of
 6 absence is not considered a new admission.

7 (6) The staffing ratios required under this section shall be the minimum direct care-
 8 nursing staff requirements and shall be adjusted upward to meet the care needs
 9 of the residents. Any modification of staffing ratios based on acuity of care shall
 10 be recorded by the facility for each day and each shift. A report shall be made
 11 each quarter of the state fiscal year to the Office of Inspector General within the
 12 Cabinet for Health and Family Services on direct-care staffing based on the
 13 acuteness of the residents. These records shall be open for inspection upon
 14 request.

15 (7) The Cabinet for Health and Family Services shall promulgate administrative
 16 regulations to provide the Office of Inspector General within the Cabinet for
 17 Health and Family Services the authority to enforce compliance with this section.

18 (8) A long-term care facility that violates this section shall be subject to a civil fine of
 19 no more than one thousand dollars (\$1,000) for each day that a staffing
 20 requirement is not maintained.

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

23 (1) The Cabinet for Health and Family Services shall create a seventeen (17)
 24 member Long-Term Care Minimum Staffing Committee to review staffing
 25 requirements in long-term care facilities on an annual basis. Membership shall
 26 consist of the following:

27 (a) The commissioner of the Department for Medicaid Services or a designee;

- 1 (b) The commissioner of the Department for Aging and Independent Living or
2 a designee;
- 3 (c) The inspector general within the Cabinet for Health and Family services or
4 a designee;
- 5 (d) The executive director of the Alzheimer's Association Kentucky chapter or a
6 designee;
- 7 (e) A nursing home administrator as designated by the board of directors of the
8 Kentucky Association of Health Care Facilities;
- 9 (f) The president of the Kentucky Hospital Association or a designee;
- 10 (g) Three (3) district long-term care ombudsmen representing diverse areas of
11 the state;
- 12 (h) A person designated by the Kentucky chapter of AARP;
- 13 (i) A hospice administrator as designated by the Kentucky Association of
14 Hospice and Palliative Care;
- 15 (j) A nurse who is currently employed by a long-term care facility, as
16 designated by the Kentucky Nurses Association;
- 17 (k) A nursing home administrator as designated by the board of directors of
18 LeadingAge Kentucky or a designee;
- 19 (l) Three (3) members of long-term care facility families, as designated by the
20 state long-term care ombudsman, from diverse areas of the state, who shall
21 not be selected from a long-term care facility that is represented by a
22 member of the committee; and
- 23 (m) The president of Kentuckians for Nursing Home Reform.
- 24 (2) A quorum of the committee shall be nine (9) or more members.
- 25 (3) The Cabinet for Health and Family Services shall provide sufficient staff for the
26 committee.
- 27 (4) The chair of the committee shall be chosen from the members identified in

1 paragraphs (d) to (m) of subsection (1) of this section. The committee shall meet
2 upon call of the chair or upon call of nine (9) members of the committee.
3 (5) On or before December 1, 2021, and every December 1 thereafter, the committee
4 shall report to the Interim Joint Committee on Health and Welfare and Family
5 Services the results of its annual review of staffing requirements, including any
6 recommended changes to the requirements.