

1 AN ACT relating to health care services agencies.

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

3 ➔Section 1. KRS 216.718 is amended to read as follows:

4 As used in KRS 216.718 to 216.728:

- 5 (1) "Assisted living community" has the same meaning as in KRS 194A.700;
- 6 (2) "Cabinet" means the Cabinet for Health and Family Services;
- 7 (3) "Controlling person" means:
- 8 (a) A corporation, partnership, or other business entity, or an officer, program
- 9 administrator or director thereof, whose responsibilities include the direction
- 10 of the management or policies of a health care services agency; or
- 11 (b) An individual who, directly or indirectly, beneficially owns an interest in a
- 12 corporation, partnership, or other business entity that is a health care services
- 13 agency;
- 14 (4) "Direct care service" means a service provided to a resident in an assisted living
- 15 community, a resident in a long-term care facility, or a patient in a hospital, by
- 16 direct care staff;
- 17 (5) "**Permanent** direct care staff" means an individual who contracts with or is
- 18 employed by a health care services agency **on a permanent basis** to provide direct
- 19 care services to residents in assisted living communities, residents in long-term care
- 20 facilities, or patients in hospitals;
- 21 (6) "Health care services agency" means any person, firm, corporation, partnership, or
- 22 other business entity engaged in the business of referring direct care staff to render
- 23 temporary direct care services to an assisted living community, a long-term care
- 24 facility, or a hospital but does not include a health care services agency operated by
- 25 an assisted living community, a long-term care facility, a hospital, or any affiliates
- 26 thereof, solely for the purpose of procuring, furnishing, or referring temporary
- 27 **direct care staff** or permanent direct care staff for employment at that assisted

1 living community, long-term care facility, hospital, or any affiliates thereof;

2 (7) "Hospital" means a facility licensed pursuant to KRS Chapter 216B as an acute-care
3 hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency
4 treatment facility;~~and~~

5 (8) "Long-term care facilities" has the same meaning as in KRS 216.510; and

6 (9) "Temporary direct care staff" means an individual who contracts with or is
7 employed by a health care services agency for a temporary, undefined duration or
8 a duration of less than twenty-four (24) continuous months exclusive of any
9 extension to provide direct care services to residents in assisted living
10 communities, residents in long-term care facilities, or patients in hospitals.

11 ➔Section 2. KRS 216.722 is amended to read as follows:

12 (1) A health care services agency shall:

13 (a) Retain documentation that each permanent direct care staff or temporary
14 direct care staff contracted with or employed by the agency meets the
15 minimum licensing, certification, training, and continuing education standards
16 for his or her position;

17 (b) Comply with all pertinent requirements relating to the health and other
18 qualifications of personnel employed in assisted living communities, long-
19 term care facilities, or hospitals;

20 (c) Carry all professional and general liability insurance coverage to insure
21 against loss, damage, or expense incident to a claim arising out of the death or
22 injury of any person as the result of negligence or malpractice in the provision
23 of direct care services by the health care services agency or any permanent
24 direct care staff or temporary direct care staff;

25 (d) Carry an employee dishonesty bond in the amount of ten thousand dollars
26 (\$10,000);

27 (e) Maintain coverage for workers' compensation for all permanent direct care

1 staff or temporary direct care staff; and

2 (f) Retain all records for five (5) calendar years and make all records
3 immediately available to the cabinet upon request.

4 (2) Failure to comply with subsection (1) of this section shall result in:

5 (a) Denial of an application for registration or registration renewal; or

6 (b) Revocation of registration and a monetary penalty in the amount of twenty-
7 five thousand dollars (\$25,000).

8 (3) If the cabinet determines that a health care services agency has knowingly provided
9 to an assisted living community, a long-term care facility, or a hospital permanent
10 direct care staff or temporary direct care staff who have illegally or fraudulently
11 obtained or been issued a diploma, registration, license, certification, or criminal
12 background check, the cabinet shall immediately notify the agency that its
13 registration will be revoked in fifteen (15) days.

14 ➔Section 3. KRS 216.724 is amended to read as follows:

15 (1) A health care services agency shall not:

16 (a) Restrict in any manner the employment opportunities of any permanent direct
17 care staff or temporary direct care staff that is contracted with or employed
18 by the agency, including but not limited to contract buy-out provisions or
19 contract non-compete clauses;

20 (b) Require, in any contract with permanent direct care staff or temporary direct
21 care staff, an assisted living community, a long-term care facility, or a
22 hospital, the payment of liquidated damages, employment fees, or other
23 compensation should the employee be hired as a permanent employee of the
24 assisted living community, long-term care facility, or hospital, except in cases
25 where the damages, fees, or compensation are payable solely by the assisted
26 living community, long-term care facility, or hospital and the contract with
27 the assisted living community, long-term care facility, or hospital specifies

1 that the amount will be reduced pro-rata based on the length of time the
2 permanent direct care staff or temporary direct care staff performs services
3 for the assisted living community, long-term care facility, or hospital while on
4 the payroll of the health care services agency; or

5 (c) Solicit or recruit the current staff of an assisted living community, long-term
6 care facility, or hospital, or require, as a condition of employment,
7 assignment, or referral, that their employees recruit new employees for the
8 agency from among the current employees of the assisted living community,
9 long-term care facility, or hospital to which the agency employees are
10 employed, assigned, or referred.

11 (2) Any contract between a health care services agency and permanent direct care staff
12 or temporary direct care staff that does not comply with subsection (1) of this
13 section shall be considered an unfair trade practice and be void pursuant to KRS
14 365.060.

15 ➔Section 4. KRS 216.726 is amended to read as follows:

16 The cabinet shall establish a reporting system for complaints relating to a health care
17 services agency or permanent direct care staff or temporary direct care staff. Complaints
18 may be reported by any member of the public. The cabinet shall investigate the
19 complaints and report its findings to the complaining party and the health care services
20 agency.

21 ➔Section 5. KRS 216.728 is amended to read as follows:

22 (1) A health care services agency shall submit quarterly reports to the cabinet.

23 (2) The cabinet shall promulgate administrative regulations in accordance with KRS
24 Chapter 13A to establish requirements for health care services agencies to submit
25 quarterly reports. The quarterly reports shall include but not be limited to the
26 following:

27 (a) The name, professional licensure or certification, and assigned location for

- 1 each permanent direct care staff or temporary direct care staff;
- 2 (b) The length of time the permanent direct care staff or temporary direct care
3 staff have been assigned to the assisted living communities, long-term care
4 facilities, or hospitals and the total hours worked; and
- 5 (c) For all long-term care facilities or hospitals that participate in the Medicare
6 and Medicaid programs, copies of all invoices submitted to the long-term care
7 community or hospital and proof of payment by the long-term care
8 community or hospital.
- 9 (3) A health care services agency shall disclose the following information in response
10 to a request from the Attorney General during an investigation of an alleged or
11 suspected violation of KRS 367.374 by the health care services agency:
- 12 (a) The amount charged for each permanent direct care staff or temporary direct
13 care staff;
- 14 (b) The amount paid to each permanent direct care staff or temporary direct care
15 staff;
- 16 (c) The amount of payment received that is retained by the health care services
17 agency; and
- 18 (d) Any other information that the Attorney General deems relevant to determine
19 the amount that the assisted living facility, long-term care facility, or hospital
20 is charged by the health care services agency.
- 21 (4) The information provided under subsection (3) of this section shall not be subject to
22 open records laws pursuant to KRS 61.870 to 61.884.