

## **910 KAR 1:240. Certification of assisted-living communities.**

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 194A.707(1) and (2) require the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

### Section 1. Definitions.

- (1) "Activities of daily living" is defined by KRS 194A.700(1).
- (2) "Ambulatory" means the ability to walk without assistance.
- (3) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.
- (4) "Assisted-living community" is defined by KRS 194A.700(4).
- (5) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.
- (6) "Client", "resident", or "tenant" is defined by KRS 194A.700(5).
- (7) "Client's designated representative" means a person identified in a document signed and dated by the client, client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).
- (8) "Danger" is defined by KRS 194A.700(6).
- (9) "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).
- (10) "Instrumental activities of daily living" is defined by 194A.700(9).
- (11) "Licensed healthcare professional" is defined by KRS 216.300(1).
- (12) "Living unit" is defined by KRS 194A.700(10).
- (13) "Mobile non-ambulatory" is defined by KRS 194A.700(11).
- (14) "Plan of correction" is defined by KRS 194A.700(12).
- (15) "Statement of danger" is defined by KRS 194A.700(13).
- (16) "Statement of noncompliance" is defined by KRS 194A.700(14).
- (17) "Temporary condition" means a condition that affects a client as follows:
  - (a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or
  - (b)
    1. The client loses mobility after entering a lease agreement;
    2. The client is not expected to regain mobility;
    3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and
    4. The assisted-living community has a written plan in place to ensure that the client is not a danger.

Section 2. Application and Fees for Initial Certification Review.

- (1) For initial certification an applicant shall, at least sixty (60) days prior to a planned opening, file with the department:
  - (a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;
  - (b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;
  - (c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11);
  - (d) The floor plan of the proposed assisted-living community identifying the:
    1. Living units, including features that meet the requirements of KRS 194A.703(1);
    2. Central dining area;
    3. Laundry facility; and
    4. Central living room; and
  - (e) A nonrefundable application fee for applications submitted for certification beginning July 1, 2019 shall be:
    1. Forty (40) dollars per unit requested to be certified, according to the DAIL-ALC-1, Assisted-Living Community Certification Application, in addition to the following fee schedule:
      - a. 100 or more units \$2,000;
      - b. 75–99 units \$1,750;
      - c. 50–74 units \$1,500;
      - d. 25–49 units \$1,000; or
      - e. < 25 units \$500;
    2. Made payable to the Kentucky State Treasurer; and
    3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.
- (2) The applicant shall notify the department upon occupancy of five (5) residents in the assisted-living community.

Section 3. Application and Fees for Annual Certification Review. The department shall renew a certification if an assisted-living community:

- (1) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and
- (2) Submits to the department annually by July 1:
  - (a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;
  - (b) The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and
  - (c) The nonrefundable annual application and certification fee, that beginning July 1, 2019, shall be:
    1. Forty (40) dollars per certified unit, in addition to the following fee schedule:
      - a. 100 or more units \$2,000;
      - b. 75–99 units \$1,750;
      - c. 30–74 units \$1,500;
      - d. 25–49 units \$1,000; or
      - e. < 25 units \$500;
    2. Made payable to the Kentucky State Treasurer; and
    3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.
- (3) The 2019 annual certification fee may be made in payments over six (6) months if:
  - (a) There is a documented hardship; and
  - (b) The payments are approved by the department's commissioner.

#### Section 4. Change in an Assisted-Living Community.

- (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:
  - (a) In accordance with Section 2(1) of this administrative regulation; and
  - (b) Not less than sixty (60) days prior to the increase.
- (2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be sixty (60) dollars per each additional unit.
- (3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.
- (4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:
  - (a) By following the procedures in Section 3 of this administrative regulation; and
  - (b) Within thirty (30) days of the change of owners.
- (5) An assisted-living community shall:
  - (a) Notify the department in writing:
    1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or
    2. At least sixty (60) days prior to termination of operation; and
  - (b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:
    1. Fire;
    2. Natural disaster; or
    3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

- (1) Consider the application process complete;
- (2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and
- (3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3 of this administrative regulation, the department shall:

- (1) Consider the application process complete; and
- (2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

Section 7. On-Site Review of an Assisted-Living Community.

- (1)
  - (a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).
  - (b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.
- (2) The on-site review shall consist of:
  - (a) Review of staffing pursuant to KRS 194A.717(1);
  - (b) Review of employment records in accordance with subsection (3) of this section;
  - (c) Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4);
  - (d) Documentation of:
    1. Completion of employee orientation:
      - a. Pursuant to KRS 194A.719(1); and

- b. Within ninety (90) days of the date of hire; and
  - 2. Annual in-service education pursuant to KRS 194.719(2);
  - (e) Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);
  - (f) Review of client records in accordance with subsection (4) of this section;
  - (g) Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;
  - (h) Review of an assisted-living community's written service provision and practices in accordance with subsection (5) of this section; and
  - (i) Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10).
- (3) Review of Employment Records.
- (a) During the on-site review, the following employment records shall be reviewed, except as provided in paragraph (b) of this subsection:
    - 1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);
    - 2. A criminal record check that shall:
      - a. Be requested in accordance with KRS 216.789(3);
      - b. Be applied for no sooner than forty-five (45) days prior to but no later than seven (7) days following an employee's first day of work;
      - c. Be checked every other year through the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;
      - d. Include a criminal record check upon hire from any state in which the employee lived outside of Kentucky in the last three (3) years; and
      - e. Include a criminal record check at least every other year from the state in which the employee resides if the employee maintains residency outside of Kentucky;
    - and
    - 3. A check of the central registry, the adult protective services caregiver misconduct registry, and nurse aide registry that shall:
      - a. Be performed on an employee upon the initial date of hire and at least annually thereafter; and
      - b. Show that the employee was not found on the registries.
  - (b) An assisted living community may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of this subsection.
- (4) Review of Client Records. During the on-site review, the following client records shall be reviewed:
- (a) A completed client functional needs assessment that shall:
    - 1. Be completed:
      - a. Upon move in;
      - b. Once every twelve (12) months thereafter; and
      - c. As needed due to a change in function or condition;
    - 2. Be administered by a person with at least:
      - a. A bachelor's degree in health or human services or a related field;
      - b. An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or
      - c. A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments;
    - 3. Assess to ensure the client meets the eligibility requirements for assisted-living pursuant to KRS 194A.711 and 194A.700(2);

4. Reflect the client's ability to perform activities of daily living and instrumental activities of daily living pursuant to KRS 194A.700(2); and
  5. Be provided to the client pursuant to KRS 194A.705(5);
- (b) Personal preferences and social factors that shall be updated at least every two (2) years;
  - (c) A signed lease with all attachments;
  - (d) Documentation of a client's designated representative, if applicable; and
  - (e) Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d).
- (5) Review of Written Service Provision and Practices. The on-site review shall review an assisted-living community's written service provision and practices related to:
- (a) Assistance with self-administration of medication in accordance with KRS 194A.705(1)(d), which, for medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:
    1. Providing the client with a medication reminder;
    2. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and
    3. Opening the medication container or dosage package, but not handling or removing the medication;
  - (b) Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);
  - (c) Documentation in a client's file:
    1. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:
      - a. Requested of the client by the assisted-living community; and
      - b. That states the client has a temporary condition pursuant to KRS 194A.711(1); and
    2. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided;
  - (d) Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community if the assisted-living community:
    1. Ensures a client's functional needs assessment that:
      - a. Reflects the client's abilities as specified in subsection (4)(a)4 of this section; and
      - b. Shall be updated at least annually; and
    2. Complies with the requirements of KRS 216.595; and
  - (e) Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation.
- (6) The department may, pursuant to KRS 194A.707(11), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).
- (7) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

#### Section 8. Waiver of Building Requirements.

- (1) Pursuant to KRS 216.595(3), an assisted-living community may request a waiver from the department regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.
- (2) The department shall:

- (a) Review the waiver request for approval; and
  - (b) Not waive the building and life safety codes established in KRS 194A.703(3).
- (3) An assisted-living community shall not alter the building requirements established in KRS 194A.703(1) and (2) without department approval.

Section 9. Assisted-living On-Site Review Findings.

- (1) The department shall:
- (a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and
  - (b) Submit the finding of noncompliance to the applicant:
    - 1. On a statement of noncompliance located on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction; and
    - 2. Unless the finding is due to a client being a danger pursuant to Subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.
- (2)
- (a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.
  - (b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.
- (3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:
- (a) Whether the plan of correction is approved or not approved; and
  - (b) The reasons for the department's decision.
- (4)
- (a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.
  - (b) The assisted-living community shall post the certificate in a public area.
- (5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.
- (6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and of the following rights:
- (a) The opportunity for an informal dispute resolution meeting:
    - 1. Between the department and the assisted-living community;
    - 2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and
    - 3. To address a dispute, including the provision of additional documentation or support materials; and
  - (b) Appeal rights as specified in Section 12 of this administrative regulation if:
    - 1. An informal dispute is not requested; or
    - 2. A dispute is not resolved with the informal dispute resolution.
- (7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.
- (8) The assisted-living community shall post the certification certificate in a public area.
- (9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

- (a) Immediately notify the assisted-living community as established in Section 7(7) of this administrative regulation; and
  - (b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.
- (10) Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10(2)(e)1 or 2 of this administrative regulation.
- (11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).
- (12) The department may conduct additional on-site visits pursuant to KRS 194A.707(11).

**Section 10. Denial and Revocation of Certification.**

- (1) Certification shall be denied or revoked if:
- (a)
    - 1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or
    - 2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or
  - (b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9(2) through (7) of this administrative regulation.
- (2) Certification may be denied or revoked if an assisted-living community:
- (a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;
  - (b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;
  - (c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;
  - (d) Fails to implement its most recent approved plan of correction:
    - 1. Under current ownership; and
    - 2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;
  - (e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 9(9) of this administrative regulation:
    - 1. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:
      - a. Email;
      - b. Facsimile transmission;
      - c. Delivery to the department by hand;
      - d. United States mail; or
      - e. Courier service; or
    - 2. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

- a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and
- b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:
  - (i) Email;
  - (ii) Facsimile transmission;
  - (iii) Delivery to the department by hand;
  - (iv) United States mail; or
  - (v) Courier service; or
- (f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:
  - 1. Notifies the assisted-living community in writing that the client remains a danger; and
  - 2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.
- (3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:
  - (a) Certification may be denied or revoked;
  - (b) The assisted-living community has the right to an informal dispute resolution meeting:
    - 1. Between the department and the assisted-living community;
    - 2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and
    - 3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and
  - (c) It has appeal rights pursuant to Section 12 of this administrative regulation if:
    - 1. An informal dispute resolution meeting is not requested; or
    - 2. A dispute is not resolved with the informal dispute resolution meeting.
- (4) The department shall issue a written notice to the assisted-living community if the department determines:
  - (a)
    - 1. A danger is unsubstantiated; or
    - 2. The danger has been eliminated; or
  - (b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.
- (5)
  - (a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 12 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723.
  - (b) The fine shall be paid as specified in Section 11(1) of this administrative regulation.

#### Section 11. Collection of Fees and Fines.

- (1) An entity or business found to be in violation of KRS 194A.723 and assessed a penalty pursuant to KRS 194A.724 shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.
- (2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be \$250.

#### Section 12. Right to Appeal Decision and Hearings.

(1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

- (a) By certified mail; and
- (b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

- (a) Nonapproval of the amended plan of correction; or
- (b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

- (a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and
- (b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

#### Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DAIL-ALC-1, Assisted-Living Community Certification Application", 06/2015;
- (b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", 10/2015;
- (c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", 2/09; and
- (d) "DAIL-ALC-4, Statement of Danger", 06/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(27 Ky.R. 1127; Am. 1496; eff. 12-21-2000; 34 Ky.R. 472; 796; 986; eff. 11-19-2007; 35 Ky.R. 1653; eff. 3-11-2009; 36 Ky.R. 2391; 37 Ky.R. 404; 736; eff. 9-15-2010; 39 Ky.R. 649; 986; eff. 11-9-2012; 42 Ky.R. 565; 1576; 1786; eff. 12-16-2015; TAm eff. 9-17-2018.; 45 Ky.R. 2223, 2733, 2921; eff. 5-3-2019.)