

900 KAR 2:040. Citations and violations; criteria and specific acts.

RELATES TO: KRS 13B.040, 13B.050, 13B.080, 13B.090, 13B.110, 13B.130, 216.510 – 216.525, 216.555 – 216.567, 216.577, 216A.010(3), 42 C.F.R. 483.10, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 - 1320-8

STATUTORY AUTHORITY: KRS 216.563, 216.567

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.563 requires the Cabinet for Health and Family Services to promulgate administrative regulations setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590. This administrative regulation establishes the criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 216.510(3).
- (2) "Citation" means written notification of a Type A or Type B violation.
- (3) "Long-term care administrator" is defined by KRS 216A.010(3).
- (4) "Long-term care facility" means the same as "long-term care facilities" defined by KRS 216.510(1).
- (5) "Resident" is defined by KRS 216.510(2).
- (6) "Type A violation" means a violation, as described by KRS 216.557(1), by a long-term care facility of the administrative regulations, standards, and requirements established by the cabinet pursuant to KRS 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations that present an imminent danger to any resident of a long-term care facility and creates substantial risk that death or serious mental or physical harm to a resident will occur.
- (7) "Type B violation" means a violation, as described by KRS 216.557(2), by a long-term care facility of the administrative regulations, standards, and requirements established by the cabinet pursuant to KRS 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations that present a direct or immediate relationship to the health, safety, or security of any resident, but which does not create an imminent danger.

Section 2. Written Citations and Imposition of Penalties.

- (1) The cabinet's finding of a Type A or Type B violation shall be:
 - (a) Communicated to the long-term care facility at the exit conference of an onsite survey; and
 - (b) Issued as a written citation in the statement of deficiencies, including:
 1. The nature of the violation;
 2. The statutory provision or administrative regulation alleged to have been violated pursuant to KRS 216.555; and
 3. Notice of the right to appeal the:
 - a. Citation; and
 - b. Proposed assessment of the civil penalty.
- (2) The cabinet shall issue the citation and statement of deficiencies as soon as practicable to the licensee, long-term care administrator, or designated representative by:
 - (a) Certified mail, return receipt requested;
 - (b) Personal service; or
 - (c) Other method of delivery, which may include electronic service.
- (3) If the cabinet sends notice of a citation and statement of deficiencies to a long-term care facility electronically, the cabinet shall request that the facility reply immediately upon receipt to confirm that the facility received the citation.

- (4) If a long-term care facility fails to reply to the cabinet within one (1) business day after the cabinet sends a citation and statement of deficiencies electronically, the cabinet:
 - (a) Shall contact the licensee, long-term care administrator, or administrator's designee by telephone to determine receipt; and
 - (b) May deliver the citation and statement of deficiencies by certified mail or personal service if a second attempt to send the citation electronically is not successful.
- (5) The date of the exit conference shall be day one (1) of the time period specified for abatement of a Type A or Type B violation.
- (6) The cabinet shall consider the factors established in KRS 216.565 in determining the amount of the initial penalty to be imposed for a Type A or Type B violation.

Section 3. Criteria for Finding a Type A Violation.

- (1) The following specific acts or circumstances shall constitute a Type A violation:
 - (a) The cabinet determines that one (1) or more violations related to resident care or physical plant standards:
 1. Resulted in actual harm to a resident; or
 2. Represent an imminent danger and create a substantial risk that death or serious mental or physical harm to a resident will occur;
 - (b) The facility fails to implement a regular program to prevent pressure sores with emphasis on the following:
 1. Procedures to maintain clean linens for each resident;
 2. Procedures to assure that clothes and linens are cleaned each time the bed or clothing is soiled;
 3. Procedures to assure adherence to nationally recognized clinical practice guidelines or recommendations that shall be in writing and available to direct care staff;
 4. Documentation that direct care staff have received training on nationally recognized pressure ulcer guidelines;
 5. Procedures to assist the resident in being up and out of bed as much as the resident's condition permits, unless medically contraindicated; and
 6. If a resident is bedfast or unable to relieve pressure, procedures that require staff to assist the resident to change positions as often as necessary, but no less than every (2) hours to:
 - a. Stimulate circulation;
 - b. Prevent pressure areas, contractures, and decubitus; and
 - c. Promote the healing of any pressure sores;
 - (c) The facility fails to ensure that a resident who is admitted to the facility without pressure sores does not develop pressure sores, unless the individual's clinical condition demonstrates that they were unavoidable;
 - (d) If a resident has pressure sores, the facility fails to provide necessary treatment and services to:
 1. Promote healing;
 2. Prevent infection; and
 3. Prevent new sores from developing;
 - (e) The facility knowingly admits or retains an individual whose needs exceed the facility's capability to care for the resident;
 - (f) The facility fails to disclose to a resident a serious preventable adverse event that affected the resident;
 - (g) The cabinet finds a violation of a resident's rights, pursuant to KRS 216.515 to 216.520 or 42 C.F.R. 483.10, that presents an imminent danger to any resident and creates substantial risk that death or serious mental or physical harm will occur;

- (h) The facility fails to consult a physician if a resident experiences a serious accident or illness;
 - (i) The facility fails to follow the written instructions of an attending physician, or in case of emergency, verbal order given by the physician or licensed practitioner acting within the physician or practitioner's scope of practice during use of a physical restraint or pharmaceutical agent that restricts a resident's movement;
 - (j) The facility fails to advise the attending physician if an error in medication occurs, the error is not recorded in the resident's file, and correction is not made within one (1) day of the date of discovery;
 - (k) The facility fails to store all drugs and biologicals in locked compartments under proper temperature controls;
 - (l) The facility fails to comply with a resident's medically prescribed special diet or dietary restriction, except for special days or celebrations in which the restriction has been lifted and is medically approved;
 - (m) The facility fails to maintain no less than a three (3) day supply of food in the facility; or
 - (n) The facility fails to maintain a written fire control and evacuation plan in which staff present and responsible for supervision are familiar.
- (2) A long-term care facility that fails to correct a Type A violation within the time specified for correction by the cabinet shall be subject to at least one (1) of the actions established in KRS 216.577.

Section 4. Criteria for Finding a Type B Violation. The following specific acts or circumstances shall constitute a Type B violation:

- (1) The cabinet finds one (1) or more violations related to resident care or physical plant standards that:
 - (a) Present a direct or immediate relationship to the health, safety, or security of any resident;
 - (b) Do not create an imminent danger;
 - (c) May be isolated or occasional; and
 - (d) Do not represent a pattern or widespread practice throughout the facility;
- (2) The facility maintains or admits more residents to a long-term care facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the cabinet;
- (3) The facility fails to maintain an active program of pest control for all areas of its physical plant;
- (4) The facility fails to serve at least three (3) meals per day with not more than fourteen (14) hours between the evening meal and breakfast, unless an exception is allowed pursuant to the applicable administrative regulations under 902 KAR Chapter 20;
- (5) The facility fails to meet the nutritional needs of residents by not complying with the physician's orders;
- (6) The facility fails to make between meal and bedtime snacks available, unless medically contraindicated;
- (7) The facility fails to maintain a complete medical record for each resident with all entries current, dated, and signed;
- (8) Except for a long-term care facility with an integrated heating, ventilation and air conditioning system (HVAC system), the facility fails to maintain screens on windows;
- (9) The facility fails to offer a nutritional substitute to a resident who refuses food served;
- (10) The facility fails to modify the texture or change the consistency of food served based upon a resident's need;
- (11) The facility fails to maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996

(HIPAA), 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law;

(12) Except in family care homes, the facility fails to assure that cold water and hot water is available for resident use;

(13) The facility fails to assure that the maximum water temperature available for use by a resident does not exceed 110 degrees Fahrenheit;

(14) The facility fails to provide substitutions of equal nutritive value if changes in the menu are necessary; or

(15) The facility fails to have an administrator on staff who is responsible for the operation of the facility, or who fails to delegate responsibility if absent.

Section 5. Penalties.

(1) Civil penalties shall be trebled in accordance with the provisions of KRS 216.560(3).

(2) The amount of the initial penalty shall be determined with consideration given to the factors established in KRS 216.565.

Section 6. Appeals.

(1) Within twenty (20) days of the receipt of the citation and statement of deficiencies established in Section 2 of this administrative regulation, the licensee may file a written request for a hearing with the cabinet secretary.

(2) Upon receipt of the written request for a hearing, the secretary shall designate a hearing officer in accordance with KRS 216.567(2).

(3) A hearing shall be scheduled and commenced as soon as practicable after receipt of the request for hearing.

(4) Notice of the hearing shall:

(a) Be served on the party pursuant to KRS 13B.050(1) and (2); and

(b) Include the information required by KRS 13B.050(3).

(5) The hearing officer may hold a prehearing conference in accordance with KRS 13B.070.

(6) The hearing shall be conducted pursuant to KRS 13B.080 and 13B.090.

(7) Within sixty (60) days of the closing of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding.

(8) In addition to the requirements of KRS 13B.130, the official record of the hearing shall include:

(a) The notice of citation within the statement of deficiencies or penalty assessed;

(b) Any staff reports, memoranda, or documents prepared by, or for the cabinet regarding the matter under review as introduced at the hearing;

(c) Any information provided by the parties as introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review; and

(e) Upon its completion, the prehearing orders, if any, and the report of the hearing officer containing the:

1. Findings of fact;

2. Conclusions of law; and

3. Final decision.

(9) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.567(3).

(10) An appeal of a Type A or Type B violation shall not be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct the violation in a timely manner.

(11) In addition to the grounds for disqualification established by KRS 13B.040(2)(b), a hearing officer shall not participate in a hearing involving a long-term care facility if the hearing officer has, within the twelve (12) month period preceding the hearing, had any ownership interest, employment, staff, fiduciary, contractual, creditor, or consultative relationship with the facility.

(9 Ky.R. 756; Am. 1018; 1281; eff. 5-4-1983; 16 Ky.R. 924; eff. 1-12-1990; 20 Ky.R. 2172; eff. 3-14-1994; 45 Ky.R. 1103, 2125; eff. 2-21-2019; TAm eff. 3-17-2020.)