

1 AN ACT relating to assisted-living communities.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 194A.700 TO 194A.729 IS
4 CREATED TO READ AS FOLLOWS:

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

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

9 *1. KRS Chapter 209;*

10 *2. KRS Chapter 218A;*

11 *3. KRS 507.020, 507.030, and 507.040;*

12 *4. KRS Chapter 509;*

13 *5. KRS Chapter 510;*

14 *6. KRS Chapter 511;*

15 *7. KRS Chapter 513;*

16 *8. KRS 514.030;*

17 *9. KRS Chapter 530;*

18 *10. KRS Chapter 531;*

19 *11. KRS 508.010, 508.020, 508.030, and 508.032;*

20 *12. A criminal statute of the United States or another state similar to*
21 *subparagraphs 1. to 11. of this paragraph; or*

22 *13. A violation of the uniform code of military justice or military*
23 *regulation similar to subparagraphs 1. to 11. of this paragraph*
24 *which has caused the person to be discharged from the Armed*
25 *Forces of the United States;*

26 *(b) Has a substantiated finding of child abuse or neglect by the cabinet as*
27 *documented by the Child Abuse/Neglect Central Registry maintained by the*

1 cabinet;

2 (c) Has a validated substantiated finding of adult abuse, neglect, or exploitation
 3 by the cabinet as documented by the Adult Caregiver Misconduct Registry
 4 maintained by the cabinet; or

5 (d) Is listed on the Kentucky Nurse Aide Abuse Registry.

6 (2) A person who has received a pardon for an offense specified in subsection (1)(a)
 7 of this section or has had the record of such an offense expunged may be an
 8 owner, manager, operator, or employed.

9 (3) An assisted-living community that is certified as of July 1, 2019, and is owned by
 10 a person who is prohibited from being certified or having a certification renewed
 11 under subsection (1) of this section, may continue to operate if the person listed
 12 as owner in the certification application in existence as of July 1, 2019, does not
 13 have contact or potential contact with any client on the assisted-living
 14 community's property regardless of purpose.

15 ➔Section 2. KRS 194A.700 is amended to read as follows:

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

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

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

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

27 (a) Assistance with medication that is prepared or directed by the client, the

1 client's designated representative, or a licensed health care professional who is
2 not the owner, manager, or employee of the assisted-living community. The
3 medication shall:

- 4 1. Except for ointments, be preset in a medication organizer or be in a
5 single dose unit;
- 6 2. Include the client's name on the medication organizer or container in
7 which the single dose unit is stored; and
- 8 3. Be stored in a manner requested in writing by the client or the client's
9 designated representative~~[and permitted by the assisted living~~
10 ~~community's policies];~~

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

- 12 1. Reminding a client when to take medications and observing to ensure
13 that the client takes the medication as directed;
- 14 2. Handing the client's medication to the client, or if it is difficult for the
15 client or the client requests assistance, opening the unit dose or
16 medication organizer, removing the medication from a medication
17 organizer or unit dose container, closing the medication organizer for the
18 client, placing the dose in a container, and placing the medication or the
19 container in the clients hand;
- 20 3. Steadying or guiding a client's hand while the client is self-administering
21 medications; or
- 22 4. Applying over-the-counter topical ointments and lotions;

23 (c) Making available the means of communication by telephone, facsimile, or
24 other electronic device with a licensed health care professional and pharmacy
25 regarding a prescription for medication;

26 (d) At the request of the client or the client's designated representative, facilitating
27 the filling of a preset medication container by a designated representative or

- 1 licensed health care professional who is not the owner, manager, or employee
2 of the assisted living community; and
- 3 (e) None of the following:
- 4 1. Instilling eye, ear, or nasal drops;
 - 5 2. Mixing compounding, converting, or calculating medication doses;
 - 6 3. Preparing syringes for injection or administering medications by any
7 injection method;
 - 8 4. Administrating medications through intermittent positive pressure
9 breathing machines or a nebulizer;
 - 10 5. Administrating medications by way of a tube inserted in a cavity of the
11 body;
 - 12 6. Administrating parenteral preparations;
 - 13 7. Administrating irrigations or debriding agents used in the treatment of a
14 skin condition; or
 - 15 8. Administrating rectal, urethral, or vaginal preparations;
- 16 (4) "Assisted-living community" means a series of living units on the same site
17 certified under KRS 194A.707 to provide services for five (5) or more adult persons
18 not related within the third degree of consanguinity to the owner or manager;
- 19 (5) "Client," "resident," or "tenant" means an adult person who has entered into a lease
20 agreement with an assisted-living community;
- 21 (6) "Danger" means:
- 22 (a) Physical harm or threat of physical harm to one's self or others; or
 - 23 (b) *A condition that the department finds exists on or within the premises of the*
24 *assisted-living community, based on factual circumstances, that threatens*
25 *imminent harm to a client's health or physical safety and for which a plan*
26 *of correction has not been submitted and approved by the department as*
27 *required;*

- 1 (7) "Department" means the Department for Aging and Independent Living;
- 2 (8) "Health services" has the same meaning as in KRS 216B.015;
- 3 (9) "Instrumental activities of daily living" means activities to support independent
4 living including but not limited to housekeeping, shopping, laundry, chores,
5 transportation, and clerical assistance;
- 6 (10) "Living unit" means a portion of an assisted-living community occupied as the
7 living quarters of a client under a lease agreement;
- 8 (11) "Mobile nonambulatory" means unable to walk without assistance, but able to move
9 from place to place with the use of a device including but not limited to a walker,
10 crutches, or wheelchair;
- 11 (12) "Plan of correction" means a written response from the assisted-living community
12 addressing an instance cited in the statement of noncompliance;
- 13 (13) "Statement of danger" means a written statement issued by the department detailing
14 an instance where a client is a danger or in danger due to a condition that exists at
15 the assisted-living community; and
- 16 (14) "Statement of noncompliance" means a written statement issued by the department
17 detailing an instance when the department considers the assisted-living community
18 to have been in violation of a statutory or regulatory requirement.

19 ➔Section 3. KRS 194A.707 (Effective until July 1, 2019) is amended to read as
20 follows:

- 21 (1) The Cabinet for Health and Family Services shall establish by the promulgation of
22 administrative regulation under KRS Chapter 13A, an initial and annual
23 certification ~~renewal~~^{review} process for assisted-living communities. This
24 administrative regulation shall establish procedures related to applying for,
25 reviewing, renewing, and approving, denying, or revoking certification. A denial or
26 revocation of certification may be appealed, and upon appeal an administrative
27 hearing shall be conducted within ninety (90) days of the date the appeal is filed

1 *if received within the required time limit. An assisted-living community that has*
 2 *adhered to all time frames shall be able to operate during the appeal process and*
 3 *until a hearing officer has rendered a final decision. The administrative hearing*
 4 *shall be conducted as governed by KRS Chapter 13B. If no appeal is requested or*
 5 *is not filed within the required time limit, the notice of denial or revocation issued*
 6 *by the cabinet shall become final and may be appealed to the Circuit Court within*
 7 *thirty (30) days of the date it becomes final*~~[, as well as the conduct of hearings~~
 8 ~~upon appeals as governed by KRS Chapter 13B].~~

- 9 (2) An on-site visit of an assisted-living community shall be conducted by the cabinet:
- 10 (a) As part of the initial certification review process;
- 11 (b) On *an annual*~~[a biennial]~~ basis as part of the certification *renewal*~~[review]~~
 12 process ~~[if during or since the previous certification review an assisted-living~~
 13 ~~community has not received:~~
- 14 1. ~~Any statement of danger, unless withdrawn by the cabinet; or~~
- 15 2. ~~A finding substantiated by the cabinet that the assisted-living community~~
 16 ~~delivered a health service; and~~
- 17 (c) ~~Within one (1) year of the date of the previous certification review if during or~~
 18 ~~since the last certification review an assisted-living community has received:~~
- 19 1. ~~Any statement of danger that was not withdrawn by the cabinet; or~~
- 20 2. ~~A finding substantiated by the cabinet that the assisted-living community~~
 21 ~~delivered a health service].~~
- 22 (3) No business shall market its service as an assisted-living community unless it has:
- 23 (a) Filed a current application for the business to be certified by the department as
 24 an assisted-living community; or
- 25 (b) Received certification by the department as an assisted-living community.
- 26 (4) No business that has been denied *renewal* or had its certification revoked shall
 27 operate or market its service as an assisted-living community unless it has:

- 1 (a) Filed a current application for the business to be certified or have certification
2 renewed by the department as an assisted-living community; and
- 3 (b) Received certification as an assisted-living community from the department.
4 Revocation of certification may be grounds for the department to not
5 renew~~[reissue]~~ certification ~~[for one (1) year]~~ if ownership remains
6 substantially the same.
- 7 (5) No business shall operate as an assisted-living community unless its owner or
8 manager has:
- 9 (a) Filed a current application for the business to be certified or certification
10 renewed as an assisted-living community by the department; and
- 11 (b) Received certification as an assisted-living community from the department.
- 12 (6) By September 1 of each year, each assisted-living community certified pursuant to
13 this chapter may provide residents with educational information or education
14 opportunities on influenza disease.
- 15 (7) The department shall determine the feasibility of recognizing accreditation by other
16 organizations in lieu of certification from the department.
- 17 (8) Individuals designated by the department to conduct certification reviews shall have
18 the skills, training, experience, and ongoing education to perform certification
19 reviews.
- 20 (9) Upon receipt of an application for certification, the department shall assess an
21 assisted-living community certification and renewal fee in the amount of twenty
22 dollars (\$20) per living unit that in the aggregate for each assisted-living community
23 is no less than three hundred dollars (\$300) and no more than one thousand six
24 hundred dollars (\$1,600). The department shall submit a breakdown of fees
25 assessed and costs incurred for conducting certification and renewal reviews upon
26 request.
- 27 (10) The department shall make findings from certification reviews conducted during the

1 prior twelve (12) months available to any interested person.

2 (11) Notwithstanding any provision of law to the contrary, the department may request
3 any additional information from an assisted-living community or conduct additional
4 on-site visits to ensure compliance with the provisions of KRS 194A.700 to
5 194A.729.

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

9 ➔Section 4. KRS 194A.707 (Effective July 1, 2019) is amended to read as
10 follows:

11 (1) The Cabinet for Health and Family Services shall establish by the promulgation of
12 administrative ~~regulation~~ **regulations** under KRS Chapter 13A, an initial and
13 annual certification ~~review~~ **renewal** process for assisted-living communities. This
14 administrative regulation shall establish procedures related to applying for,
15 reviewing, **renewing**, and approving, denying, or revoking certification. **A denial or**
16 **revocation of certification may be appealed, and upon appeal an administrative**
17 **hearing shall be conducted within ninety (90) days of the date the appeal is filed**
18 **if received within the required time limit. An assisted-living community that has**
19 **adhered to all time frames shall be able to operate during the appeal process and**
20 **until a hearing officer has rendered a final decision. The administrative hearing**
21 **shall be conducted as governed by KRS Chapter 13B. If no appeal is requested or**
22 **is not filed within the required time limit, the notice of denial or revocation issued**
23 **by the cabinet shall become final and may be appealed to the Circuit Court within**
24 **thirty (30) days of the date it becomes final**~~[, as well as the conduct of hearings~~
25 ~~upon appeals as governed by KRS Chapter 13B].~~

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

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

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

- 1 (b) Received certification as an assisted-living community from the department.
- 2 (6) By September 1 of each year, each assisted-living community certified pursuant to
3 this chapter may provide residents with educational information or education
4 opportunities on influenza disease.
- 5 (7) The department shall determine the feasibility of recognizing accreditation by other
6 organizations in lieu of certification from the department.
- 7 (8) Individuals designated by the department to conduct certification reviews shall have
8 the skills, training, experience, and ongoing education to perform certification
9 reviews.
- 10 (9) The cabinet may promulgate administrative regulations to establish an assisted-
11 living community certification and renewal fee that shall not exceed costs of the
12 program to the cabinet, to be assessed upon receipt of an application for
13 certification. The department shall submit a breakdown of fees assessed and costs
14 incurred for conducting certification and renewal reviews upon request.
- 15 (10) The department shall make findings from certification reviews conducted during the
16 prior twelve (12) months available to any interested person.
- 17 (11) Notwithstanding any provision of law to the contrary, the department may request
18 any additional information from an assisted-living community or conduct additional
19 on-site visits to ensure compliance with the provisions of KRS 194A.700 to
20 194A.729.
- 21 (12) Failure to follow an assisted-living community's policies, practices, and procedures
22 shall not result in a finding of noncompliance unless the assisted-living community
23 is out of compliance with a related requirement under KRS 194A.700 to 194A.729.
- 24 ➔Section 5. KRS 194A.717 is amended to read as follows:
- 25 (1) Staffing in an assisted-living community shall be sufficient in number and
26 qualification to meet the twenty-four (24) hour ~~schedule~~ needs of each client
27 pursuant to the lease agreement and the required functional needs assessment for

1 each client.

2 (2) At least one (1) awake staff member shall be on site at all times and shall not be
3 shared with another level of care during the shift being worked at the assisted-
4 living facility.

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

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

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

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