

CHAPTER 61

(HB 502)

AN ACT relating to health care services agencies.

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

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

As used in KRS 216.718 to 216.728:

- (1) "Assisted living community" has the same meaning as in KRS 194A.700;
- (2) "Cabinet" means the Cabinet for Health and Family Services;
- (3) "Controlling person" means:
 - (a) A corporation, partnership, or other business entity, or an officer, program administrator or director thereof, whose responsibilities include the direction of the management or policies of a health care services agency; or
 - (b) An individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business entity that is a health care services agency;
- (4) "Direct care service" means a service provided to a resident in an assisted living community, a resident in a long-term care facility, or a patient in a hospital, by direct care staff;
- (5) "**Permanent** direct care staff" means an individual who contracts with or is employed by a health care services agency **on a nontemporary basis** to provide direct care services to residents in assisted living communities, residents in long-term care facilities, or patients in hospitals;
- (6) "Health care services agency" means any person, firm, corporation, partnership, or other business entity engaged in the business of referring **temporary** direct care staff to render temporary direct care services to an assisted living community, a long-term care facility, or a hospital but does not include a health care services agency operated by an assisted living community, a long-term care facility, a hospital, or any affiliates thereof, solely for the purpose of procuring, furnishing, or referring temporary ~~or permanent~~ direct care staff for employment at that assisted living community, long-term care facility, hospital, or any affiliates thereof;
- (7) "Hospital" means a facility licensed pursuant to KRS Chapter 216B as an acute-care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility;~~and~~
- (8) "Long-term care facilities" has the same meaning as in KRS 216.510; **and**
- (9) "**Temporary direct care staff**" means an individual who contracts with or is employed by a health care services agency for an undefined duration or a duration of less than twenty-four (24) continuous months exclusive of any extension to provide direct care services to residents in assisted living communities, residents in long-term care facilities, or patients in hospitals.

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

- (1) A health care services agency shall:
 - (a) Retain documentation that each **temporary** direct care staff contracted with or employed by the agency meets the minimum licensing, certification, training, and continuing education standards for his or her position;
 - (b) Comply with all pertinent requirements relating to the health and other qualifications of personnel employed in assisted living communities, long-term care facilities, or hospitals;
 - (c) Carry all professional and general liability insurance coverage to insure against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of direct care services by the health care services agency or any **temporary** direct care staff;
 - (d) Carry an employee dishonesty bond in the amount of ten thousand dollars (\$10,000);
 - (e) Maintain coverage for workers' compensation for all **temporary** direct care staff; and

- (f) Retain all records for five (5) calendar years and make all records immediately available to the cabinet upon request.
- (2) Failure to comply with subsection (1) of this section shall result in:
 - (a) Denial of an application for registration or registration renewal; or
 - (b) Revocation of registration and a monetary penalty in the amount of twenty-five thousand dollars (\$25,000).
- (3) If the cabinet determines that a health care services agency has knowingly provided to an assisted living community, a long-term care facility, or a hospital **temporary** direct care staff who have illegally or fraudulently obtained or been issued a diploma, registration, license, certification, or criminal background check, the cabinet shall immediately notify the agency that its registration will be revoked in fifteen (15) days.

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

- (1) A health care services agency shall not:
 - (a) Restrict in any manner the employment opportunities of any **temporary** direct care staff that is contracted with or employed by the agency, including but not limited to contract buy-out provisions or contract non-compete clauses;
 - (b) Require, in any contract with **temporary** direct care staff, an assisted living community, a long-term care facility, or a hospital, the payment of liquidated damages, employment fees, or other compensation should the employee be hired as a permanent employee of the assisted living community, long-term care facility, or hospital, except in cases where the damages, fees, or compensation are payable solely by the assisted living community, long-term care facility, or hospital and the contract with the assisted living community, long-term care facility, or hospital specifies that the amount will be reduced pro-rata based on the length of time the **temporary** direct care staff performs services for the assisted living community, long-term care facility, or hospital while on the payroll of the health care services agency; or
 - (c) Solicit or recruit the current staff of an assisted living community, long-term care facility, or hospital, or require, as a condition of employment, assignment, or referral, that their employees recruit new employees for the agency from among the current employees of the assisted living community, long-term care facility, or hospital to which the agency employees are employed, assigned, or referred.
- (2) Any contract between a health care services agency and **temporary** direct care staff that does not comply with subsection (1) of this section shall be considered an unfair trade practice and be void pursuant to KRS 365.060.
- (3) ***The provisions of subsection (1) of this section shall not apply to contracts with permanent direct care staff or with an assisted living community, a long-term care facility, or a hospital for the placement of permanent direct care staff.***

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

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

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

- (1) A health care services agency shall submit quarterly reports to the cabinet.
- (2) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for health care services agencies to submit quarterly reports. The quarterly reports shall include but not be limited to the following:
 - (a) The name, professional licensure or certification, and assigned location for each **temporary** direct care staff;
 - (b) The length of time the **temporary** direct care staff have been assigned to the assisted living communities, long-term care facilities, or hospitals and the total hours worked; and
 - (c) For all long-term care facilities or hospitals that participate in the Medicare and Medicaid programs, copies of all invoices submitted to the long-term care community or hospital and proof of payment by the long-term care community or hospital.

- (3) A health care services agency shall disclose the following information in response to a request from the Attorney General during an investigation of an alleged or suspected violation of KRS 367.374 by the health care services agency:
- (a) The amount charged for each *temporary* direct care staff;
 - (b) The amount paid to each *temporary* direct care staff;
 - (c) The amount of payment received that is retained by the health care services agency; and
 - (d) Any other information that the Attorney General deems relevant to determine the amount that the assisted living facility, long-term care facility, or hospital is charged by the health care services agency.
- (4) The information provided under subsection (3) of this section shall not be subject to open records laws pursuant to KRS 61.870 to 61.884.

➔SECTION 6. A NEW SECTION OF KRS 216.718 TO 216.728 IS CREATED TO READ AS FOLLOWS:

KRS 216.718 to 216.728 shall not apply to the placement of permanent direct care staff.

Signed by Governor March 22, 2023.