

Assisted Living Communities

This Act:

- Requires certification of assisted living communities by the state of aging services;
- Defines “activities of daily living”, “assistance with self-administration of medication,” “assisted living community,” “client,” “danger,” “health services,” “instrumental activities of daily living,” “living unit,” and “mobile non-ambulatory;”
- Establishes physical requirements of the community and required services;
- Permits clients to contract or arrange for additional services to be provided by people outside the assisted living community, if permitted by the community’s policies;
- Requires an assisted living community to inform clients regarding policies relating to contracting or arranging for additional services upon entering into a lease agreement;
- Requires communities to help residents find appropriate living arrangements upon a move-out notice and to share information on alternative living arrangements provided by the state office of aging services;
- Prohibits any business from operating or marketing its services as an assisted living community without having a current application for certification on file or receiving certification;
- Requires the office of aging services to determine the feasibility of recognizing accreditation by other organizations in lieu of certification;
- Requires the state cabinet for health services to promulgate an administrative regulation to establish procedures related to applying for, reviewing, approving, denying, or revoking certification, as well as to the conduct of hearings upon appeals;
- Requires an initial and annual certification review with an on-site visit;
- Requires personnel that conduct certification reviews to have the skills, training, experience, and ongoing education to perform certification reviews;
- Authorizes the cabinet to assess a certification review fee of twenty dollars per living unit that in the aggregate is no less than three hundred dollars and no more than one thousand six hundred dollars;
- Requires the office of aging services to submit a yearly breakdown of fees assessed and costs incurred for conducting reviews;
- Authorizes the office to request any additional information or conduct additional on-site visits;
- Requires the office of aging services to report any alleged or actual cases of health services being delivered by the staff of an assisted living community;
- Requires staff to report abuse, neglect, or exploitation;
- Identifies client criteria;
- Establishes the content required in the lease agreement and disclosure;
- Requires grievance policies to address confidentiality of complaints and the process for resolving grievances;
- Requires an assisted living community to provide consumer education materials to the public or refer the request for information to the office of aging services;
- Establishes staffing requirements;
- Establishes orientation and in-service education requirements for employees;
- Exempts assisted living communities open or under construction on or before the effective date of this Act from the requirement that each living unit be at least two hundred square feet and have a bathtub or shower;
- Establishes penalties for operating or marketing as an assisted living community without having a current application on file or being certified;

- Exempts religious orders from certification requirements;
- Prohibits businesses that do not provide assistance with activities of daily living or assistance with self-administration of medications from certification;
- Requires the office to provide written correspondence to any lender, upon request, to denote whether the architectural drawings and lease agreement conditionally met certification requirements; permits the office to charge a fee of no more than two hundred fifty dollars for the written correspondence to the lender, and
- Requires a criminal record check for initial employment in an assisted living facility.

Submitted as:

Kentucky

HB 148

Status: enacted into law in 2000.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act Relating To Assisted Living
2 Communities.”

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4 Section 2. [*Definitions.*] As used in this Act:

5 (1) “Activities of daily living” means normal daily activities, including bathing, dressing,
6 grooming, transferring, toileting, and eating;

7 (2) “Assistance with self-administration of medication” means:

8 (a) Reminding the client to take medications;

9 (b) Reading the medication’s label;

10 (c) Confirming that medication is being taken by the client for whom it is prescribed;

11 (d) Opening the dosage packaging or medication container, but not removing or handling
12 the actual medication;

13 (e) Storing the medication in a manner that is accessible to the client; and

14 (f) Making available the means of communicating with the client’s physician and
15 pharmacy for prescriptions by telephone, facsimile, or other electronic device.

16 (3) “Assisted living community” means a series of living units on the same site, operated as [one
17 (1)] business entity, and certified under Section 5 of this Act to provide services for [five (5)] or more
18 adult people not related within the third degree of consanguinity to the owner or manager;

19 (4) “Client” means an adult person who has entered into a lease agreement with an assisted living
20 community;

21 (5) “Crime” means a conviction of or a plea of guilty to a felony offense related to theft; abuse or
22 sale of illegal drugs; abuse, neglect, or exploitation of an adult; or the commission of a sex crime.
23 Conviction of or a plea of guilty to an offense committed outside this state is a crime if the offense would
24 have been a felony in this state if committed in this state.

25 (6) “Danger” means physical harm or threat of physical harm to one’s self or others;

26 (7) “Direct service” means personal or group interaction between the employee and the nursing
27 facility resident or the senior citizen;

28 (8) “Health services” has the same meaning as in [insert citation];

29 (9) “Instrumental activities of daily living” means activities to support independent living
30 including, but not limited to, housekeeping, shopping, laundry, chores, transportation, and clerical
31 assistance;

32 (10) “Living unit” means a portion of an assisted living community occupied as the living quarters

- 33 of a client under a lease agreement;
- 34 (11) “Mobile nonambulatory” means unable to walk without assistance, but able to move from
35 place to place with the use of a device including, but not limited to, a walker, crutches, or wheelchair;
- 36 (12) “Nursing pool” means any person, firm, corporation, partnership, or association engaged for
37 hire in the business of providing or procuring temporary employment in nursing facilities for medical
38 personnel including, but not limited to, nurses, nursing assistants, nurses’ aides, and orderlies;
- 39 (13) “Office” means the [office of aging services]; and
- 40 (14) “Senior citizen” means a person [sixty (60)] years of age or older.

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42 Section 3. [*Assisted Living Units.*]

- 43 (1) Each living unit in an assisted living community shall:
- 44 (a) Be at least [two hundred (200)] square feet for single occupancy, or for double
45 occupancy if the room is shared with a spouse or another individual by mutual agreement;
- 46 (b) Include at least [one (1)] unfurnished room with a lockable door, private bathroom
47 with a tub or shower, provisions for emergency response, window to the outdoors, and a telephone jack;
- 48 (c) Have an individual thermostat control if the assisted living community has more than
49 [twenty (20)] units; and
- 50 (d) Have temperatures that are not under a client’s direct control at a minimum of
51 [seventy-one (71)] degrees Fahrenheit in winter conditions and a maximum of [eighty-one (81) degrees]
52 Fahrenheit in summer conditions if the assisted living community has [twenty (20)] or fewer units.
- 53 (2) Each client shall be provided access to central dining, a laundry facility, and a central living
54 room.
- 55 (3) Each assisted living community shall comply with applicable building and life safety codes.

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57 Section 4. [*Assisted Living Communities – Services.*]

- 58 (1) The assisted living community shall provide each client with the following services according
59 to the lease agreement:
- 60 (a) Assistance with activities of daily living and instrumental activities of daily living;
- 61 (b) [Three (3)] meals and snacks made available each day;
- 62 (c) Scheduled daily social activities that address the general preferences of clients; and
- 63 (d) Assistance with self-administration of medication.
- 64 (2) Clients of an assisted living community may arrange for additional services under direct
65 contract or arrangement with an outside agent, professional, provider, or other individual designated by the
66 client if permitted by the policies of the assisted living community.
- 67 (3) Upon entering into a lease agreement, an assisted living community shall inform the client in
68 writing about policies relating to the contracting or arranging for additional services.
- 69 (4) Each assisted living community shall assist each client upon a move-out notice to find
70 appropriate living arrangements. Each assisted living community shall share information provided from
71 the [office] regarding options for alternative living arrangements at the time a move-out notice is given to
72 the client.

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74 Section 5. [*Certification Review Process For Assisted Living Communities.*]

- 75 (1) The [cabinet for health services] shall establish by the promulgation of administrative
76 regulation under [insert citation], an initial and annual certification review process for assisted living
77 communities that shall include an on-site visit. This administrative regulation shall establish procedures
78 related to applying for, reviewing, and approving, denying, or revoking certification, as well as the
79 conduct of hearings upon appeals as governed under [insert citation].
- 80 (2) No assisted living community shall operate unless its owner or manager has:
- 81 (a) Filed a current application for the assisted living community to be certified by the
82 [office]; or
- 83 (b) Received certification of the assisted living community from the [office].

84 (3) No business shall market its services as an assisted living community unless its owner or
85 manager has:

86 (a) Filed a current application for the assisted living community to be certified by the
87 [office]; or

88 (b) Received certification of the assisted living community from the [office].

89 (4) The [office] shall determine the feasibility of recognizing accreditation by other organizations
90 in lieu of certification from the [office].

91 (5) Individuals designated by the [office] to conduct certification reviews shall have the skills,
92 training, experience, and ongoing education to perform certification reviews.

93 (6) Upon conducting a certification review, the [office] shall assess an assisted living community
94 certification fee in the amount of [twenty (20)] dollars per living unit that in the aggregate for each assisted
95 living community is no less than [three hundred (300)] dollars and no more than [one thousand six
96 hundred (1,600)] dollars. The [office] shall submit to the [legislative research commission], by [June 30]
97 of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.

98 (7) Notwithstanding any provision of law to the contrary, the [office] may request any additional
99 information from an assisted living community or conduct additional on-site visits to ensure compliance
100 with the provisions of Sections 1 to 16 of this Act.

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102 Section 6. [*Reporting and Record Keeping.*]

103 (1) The [office] shall report to the [division of licensing and regulation] any alleged or actual cases
104 of health services being delivered by the staff of an assisted living community.

105 (2) An assisted living community shall have written policies on reporting and record keeping of
106 alleged or actual cases of abuse, neglect, or exploitation of an adult.

107 (3) Any assisted living community staff member who has reasonable cause to suspect that a client
108 has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation.

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110 Section 7. [*Client Criteria.*]

111 A client shall meet the following criteria:

112 (1) Be ambulatory or mobile nonambulatory, unless due to a temporary health condition for which
113 health services are being provided in accordance with subsections (2) and (3) of Section 4 of this Act; and

114 (2) Not be a danger.

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116 Section 8. [*Lease Agreements.*]

117 A lease agreement, in no smaller type than twelve (12) point font, shall be executed by the client
118 and the assisted living community and shall include:

119 (1) Client data, for the purpose of providing service, to include:

120 (a) A functional needs assessment pertaining to the client's ability to perform activities of
121 daily living and instrumental activities of daily living;

122 (b) Emergency contact person's name;

123 (c) Name of responsible party or legal guardian, if applicable;

124 (d) Attending physician's name;

125 (e) Information regarding personal preferences and social factors;

126 (f) Advance directive under [insert citation], if desired by the client; and

127 (g) Optional information helpful to identify services that meet the client's needs.

128 (2) Assisted living community's policy regarding termination of the lease agreement;

129 (3) Terms of occupancy;

130 (4) General services and fee structure;

131 (5) Information regarding specific services provided, description of the living unit, and associated
132 fees;

133 (6) Provisions for modifying client services and fees;

134 (7) Minimum [thirty (30)] day notice provision for a change in the community's fee structure;

- 135 (8) Minimum [thirty (30)] day move-out notice provision for client nonpayment, subject to
136 applicable landlord or tenant laws;
- 137 (9) Provisions for assisting any client that has received a move-out notice to find appropriate
138 living arrangements prior to the actual move-out date;
- 139 (10) Refund and cancellation policies;
- 140 (11) Description of any special programming, staffing, or training if an assisted living community
141 is marketed as providing special programming, staffing, or training on behalf of clients with particular
142 needs or conditions;
- 143 (12) Other community rights, policies, practices, and procedures;
- 144 (13) Other client rights and responsibilities, including compliance with subsections (2) and (3) of
145 Section 4 of this Act; and
- 146 (14) Grievance policies that minimally address issues related to confidentiality of complaints and
147 the process for resolving grievances between the client and the assisted living community.
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149 Section 9. [*Consumer Information.*]

- 150 (1) An assisted living community shall provide any interested person with a:
- 151 (a) Consumer publication, as approved by the [office], that contains a thorough description
152 of state laws and regulations governing assisted living communities;
- 153 (b) Standard consumer checklist provided by the [office]; and
- 154 (c) Description of any special programming, staffing, or training if the assisted living
155 community markets itself as providing special programming, staffing, or training on behalf of clients with
156 particular needs or conditions.
- 157 (2) An assisted living community may refer a request for information required in subsection (1)(a)
158 of this Section to the [office].
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160 Section 10. [*Staffing Requirements: Assisted Living Communities.*]

- 161 (1) Staffing in an assisted living community shall be sufficient in number and qualification to meet
162 the [twenty-four (24)] hour scheduled and unscheduled needs of its clients and the services provided.
- 163 (2) [One (1)] awake staff member shall be on site at all times.
- 164 (3) An assisted living community shall have a designated manager who is at least [twenty-one
165 (21)] years of age, has at least a high school diploma or a General Educational Development diploma, and
166 has demonstrated management or administrative ability to maintain the daily operations.
- 167 (4) No employee who has an active communicable disease reportable to the [department for public
168 health] shall be permitted to work in an assisted living community if the employee is a danger to the
169 clients or other employees.
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171 Section 11. [*Staff Orientation and In-Service Education.*]

- 172 Assisted living community staff and management shall receive orientation and in-service
173 education on the following topics as applicable to the employee's assigned duties:
- 174 (1) Client rights;
- 175 (2) Community policies;
- 176 (3) Adult first aid;
- 177 (4) Cardiopulmonary resuscitation;
- 178 (5) Adult abuse and neglect;
- 179 (6) Alzheimer's disease and other types of dementia;
- 180 (7) Emergency procedures;
- 181 (8) Aging process;
- 182 (9) Assistance with activities of daily living and instrumental activities of daily living;
- 183 (10) Particular needs or conditions if the assisted living community markets itself as providing
184 special programming, staffing, or training on behalf of clients with particular needs or conditions; and
185 (11) Assistance with self-administration of medication.

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Section 12. *[Exemptions.]*

(1) Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit have a bathtub or shower.

(2) Any assisted living community that was open or under construction on or before the effective date of this Act shall have a minimum of [one (1)] bathtub or shower for each [five (5)] clients.

(3) Any assisted living community that was open or under construction on or before the effective date of this Act shall be exempt from the requirement that each living unit shall be at least [two hundred (200)] square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement.

Section 13. *[Applications and Certification: Penalties for Not Complying.]*

(1) Any assisted living community that provides services without filing a current application with the [office] or receiving certification by the [office] may be fined up to [five hundred (500)] dollars per day.

(2) Any business that markets its services as an assisted living community without filing a current application with the [office] or receiving certification by the [office] may be fined up to [five hundred (500)] dollars per day.

Section 14. *[Religious Orders.]* Religious orders providing assistance with activities of daily living, instrumental activities of daily living, and self-administration of medication to vowed members residing in the order's retirement housing shall not be required to comply with the provisions of Sections 1 to 16 of this Act.

Section 15. *[Certification: Exceptions.]* Any business, not licensed or certified in another capacity, that complies with some provisions of Sections 1 to 16 of this Act but does not provide assistance with any activities of daily living or assistance with self-administration of medication shall not be eligible for certification as an assisted living community under Sections 1 to 16 of this Act.

Section 16. *[Architectural Drawings and Lease Agreements: Correspondence Noting Compliance with this Act.]* If a person or business seeks financing for an assisted living community project, the [office] shall provide written correspondence to the lender, upon request, to denote whether the architectural drawings and lease agreement conditionally comply with the provisions of Sections 1 to 16 of this Act. The [office] may charge a fee of no more than [two hundred fifty (250)] dollars or the written correspondence to the lender.

Section 17. *[Prohibiting Using Convicted Felons as Employees.]*

(1) No long-term care facility as defined by [insert citation] or nursing pool providing staff to a nursing facility, or assisted living community shall knowingly employ a person in a position which involves providing direct services to a resident or client if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.

(2) A nursing facility or nursing pool providing staff to a nursing facility, or assisted living community may employ people convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.

(3) Each long-term care facility as defined by [insert citation], or nursing pool providing staff to a nursing facility, or assisted living community shall request all conviction information from the [justice cabinet] for any applicant for employment.

(4) The long-term care facility or nursing pool providing staff to a nursing facility, or assisted living community may temporarily employ an applicant pending the receipt of the conviction information.

237 Section 18. [*Employment Application Forms: Specifications*]

238 (1) Each application form provided by the employer, or each application form provided by a
239 facility either contracted or operated by the [department for mental health and mental retardation services]
240 of the [cabinet for health services], to the applicant for initial employment in an assisted living community,
241 nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the
242 [department for social services] or the [office of aging services] of the [cabinet for families and children]
243 and which involves providing direct services to senior citizens shall conspicuously state the following:
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245 “For this type of employment, state law requires a criminal record check as a condition of
246 employment.”
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248 (2) Any request for criminal records of an applicant as provided under subsection (1) of this
249 section shall be on a form or through a process approved by the [justice cabinet]. The [justice cabinet] may
250 charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of
251 processing the request and shall not exceed [five (5)] dollars per application.
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253 Section 19. [*Severability.*] [Insert severability clause.]

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255 Section 20. [*Repealer.*] [Insert repealer clause.]

256

257 Section 21. [*Effective Date.*] [Insert effective date.]