TEAM KENTUCKY®

CABINET FOR HEALTH AND FAMILY SERVICES

SB 11 – Assisted Living Communities
KAHCF-KCAL Annual Conference
November 16, 2022
Adam Mather, Inspector General

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SB 11

The General Assembly passed SB 11 during the 2022 legislative session to modernize Kentucky's assisted living community (ALC) statutes under KRS Chapter 194A by allowing ALCs to deliver basic health and health-related services to their residents, including those in need of dementia care, to help residents age in place with access to needed supports and services.

SB 11 also merges personal care homes — the basic health services model — with ALCs into a broader ALC licensure category.

As a result, apartment-style personal care homes that meet assisted living building standards will be required to convert to licensure as an ALC and all state-certified ALCs will be required to transition to a licensure model regulated by the OIG upon adoption of the forthcoming ALC regulation.

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OIG Responsibilities

Upon adoption of the OIG's forthcoming ALC regulation, the OIG's Division of Health Care will license and regulate all licensed ALCs, including those that wish to remain a social model. Oversight activities include:

- Reviewing and processing licensure applications.
- Conducting on-site surveys, investigating complaints, and if appropriate, imposing enforcement actions against the licensee.
- Communicating with providers and the public on issues related to assisted living laws and regulation.

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ALC Licensure Categories

In accordance with KRS 194A.710(2), the licensure categories established by SB 11 include the following:

- A social model ALC license for any facility that provides assisted living services, excluding basic health and health-related services;
- A health care model ALC that provides assisted living services, including basic health and health-related services directly to its residents (ALC-BH); and
- ALC with dementia care (ALC-DC) license for any facility that provides assisted living services and dementia care services in a secured dementia unit.

All ALCs, ALCs-BH, and ALCs-DC remain exempt from certificate of need.

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Licensure Application and Fees

The forthcoming ALC regulation will require applicants and existing providers to submit:

- A completed application at least sixty (60) days prior to the date of the planned opening or annual renewal date.
- Proof of approval by the Fire Marshal's office.
- A copy of a blank lease agreement pursuant to KRS 194A.713.
- An organizational chart that identifies entities and individuals with at least 25% ownership interest in the facility, including the relationship with the licensee and each other.
- A description of any special programming that may be provided in accordance with KRS 194A.713(11).
- A copy of the facility's floor plan.
- A nonrefundable fee anticipated to remain the same as the fee scheduled currently established by 910 KAR 1:240.

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Physical Plant Requirements

KRS 194A.703 establishes the physical plant requirements for ALCs with certain exceptions for facilities with secured dementia units.

Upon approving an application, the OIG will issue a single license for:

Each building that is operated by the licensee as an ALC, ALC-BH, or ALC-DC, except as provided under the next bullet; or

Two (2) or more buildings on a campus if operated by the same licensee.

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Resident Criteria

In accordance with KRS 194A.711, a resident of an ALC, ALC-BH, or ALC-DC shall be ambulatory unless due to a "temporary condition".

"Temporary condition" is defined by KRS 194A.700(26) as a condition that affects a resident as follows:

- The resident is not ambulatory before or after entering a lease agreement with the ALC but is expected to regain ambulatory ability within six (6) months of loss of ambulation, as documented by a licensed health care professional, and the ALC has a written plan in place to mitigate risk; ***or***
- The resident is not ambulatory after entering a lease agreement with the ALC but is not expected to regain ambulatory ability, hospice services are provided by a hospice program licensed under KRS Chapter 216B or other end-of-life services are provided by a licensed health care provider in accordance with KRS 194A.705, as documented by a licensed hospice program or other licensed health care professional, and the ALC has a written plan in place to mitigate risk.

In accordance with KRS 216.765(1), an individual shall have a medical examination prior to admission to an ALC, ALC-BH, or ALC-DC. The medical examination must include a medical history, physical examination, and diagnosis.

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Functional Needs Assessment

In accordance with KRS 194A.705(6), an ALC, ALC-BH, or ALC-DC must complete a functional needs assessment and provide a copy to the resident:

- Upon move-in; and
- As needed with updated information if there is a change in the resident's condition, but no later than once every twelve (12) months.

The functional needs assessment shall be used to ensure that the prospective or current resident meets the eligibility criteria of KRS 194A.711 and has at least minimal ability to verbally and physically participate in activities of daily living (ADL) or instrumental activities of daily living (IADL).

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Minimum Services

In accordance with KRS 194A.705, all ALCs, ALCs-BH, and ALCs-DC must provide each resident with access to the following services:

Assistance with ADLs and IADLs;

Three (3) meals and snacks each day, with flexibility in a secured dementia care unit to meet the needs of residents with cognitive impairments who may eat outside of scheduled dining hours;

Scheduled daily social activities that address the general preferences of residents;

Assistance with self-administration of medication; and

Housing.

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Basic Heath and Health-Related Services

SB 11 added new language to KRS 194A.705(2) to permit (but not require) ALCs to provide residents with access to "basic health and health-related services" in which case resident supervision is required and the licensure category will be ALC-BH.

- NOTE: All ALCs-DC are required to provide "basic health and health-related services" in accordance with KRS 194A.7052(1)(e).

KRS 194A.700(8) defines "basic health and health-related services" as:

- Monitoring and providing for the resident's health care needs;
- Storage and control of medications, other than as requested by a resident or a resident's designated representative;
- Administration of medications; and
- Arranging for therapeutic services ordered by the resident's health care practitioner if the services are not available in the ALC.

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SB 11's Definition of "Assisted Living Services"

SB 11 added "assisted living services" to 194A.700(7) as *one (1) or more* of the following services:

- Assisting with ADLs, including but not limited to bathing, dressing, grooming, transferring, toileting, and eating;
- Assisting with IADLs that support independent living, including but not limited to housekeeping, shopping, laundry, chores, transportation, and clerical assistance;
- Providing standby assistance;
- Providing verbal or visual reminders to the resident to take regularly scheduled medication, including bringing the resident previously set up medication, medication in original containers, or liquid or food to accompany the medication;
- Providing verbal or visual reminders to the resident to perform regularly scheduled treatments and exercises;
- Preparing and serving three (3) meals per day consisting of regular or modified diets ordered by a licensed health professional;
- Providing the services of an advanced practice registered nurse, registered nurse, licensed practical nurse, physical therapist, respiratory therapist, occupational therapist, speech pathologist, dietitian or nutritionist, or social worker;
- Tasks delegated to unlicensed personnel by a registered nurse or assigned by a licensed health professional within the person's scope of practice;
- Assistance with self-administration of medication;
- Medication management;
- Hands-on assistance with transfers and mobility, including use of gait belts;
- Treatments and therapies;
- Assisting residents with eating when the residents have complicated eating problems such as difficulty swallowing or recurrent lung aspirations as identified in the resident record or through an assessment;
- Scheduled daily social activities that address the general preferences of residents; and
- Other basic health and health-related services.

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Lease Agreement

Upon entering into a lease agreement, an ALC, ALC-BH, or ALC-DC must inform the resident in writing about policies related to the provision of services by the facility and contracting or arranging for additional services.

KRS 194A.713 establishes the requirements for lease agreements, which must include:

- Resident data, such as the emergency contact person's name, and name of the responsible party or legal guardian if applicable, attending physician's name, information regarding personal preferences and social factors, and advance directives if desired by the resident;
- ALC's policy on terminating lease agreements;
- Terms of occupancy;
- General services and fee structure;
- Information regarding specific services provided;
- Provisions for modifying resident services and fees;
- 30-day notice of a change in the ALC's fee structure;
- 30-day move-out notice for nonpayment, subject to applicable landlord/tenant laws;
- Provisions for assisting a resident who has received a move-out notice to find appropriate living arrangements prior to the move-out date;
- Refund and cancellation policies;
- A description of any special programming, staffing, or training if the ALC is marketed as providing special programming, staffing, or training for residents with particular needs;
- Other resident rights, which include resident rights under KRS 216.515; and
- Grievance policies.

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Minimum Staffing

In accordance with KRS 194A.717, staff must be sufficient in number and qualifications to meet the twenty-four (24) hour scheduled needs of each resident pursuant to the lease agreement, functional needs assessment, and service plan.

One (1) awake staff member must be on-site at each licensed entity at all times.

Each licensee must have a designated manager who meets the education and experience requirements of KRS 194A.717(3).

An employee who has an active communicable disease reportable to the Department for Public Health shall not be permitted to work in an ALC if the employee is a danger to the residents or other employees.

SB 11 added new language to KRS 194A.717(5) that states the following: "When a resident requires hands-on assistance* of another person to walk, transfer, or move from place to place with or without an assistive device, the ALC shall have a policy that describes how priority will be given by staff sufficient to assist that resident during times of emergency when evacuation may be necessary."

KRS 194A.700(13) defines "hands-on assistance" as "physical help by another person without which the resident is not able to perform the activity."

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Staff Training – KRS 194A.719

Orientation: Prior to working independently with residents and within thirty (30) days from the date of hire, all staff and management must receive orientation education that covers the topics required by KRS 194A.719 with emphasis on those most applicable to the employee's assigned duties.

Orientation topics must include:

- Resident rights
- Community policies
- Adult first aid
- CPR unless the policies of the ALC state that this procedure is not initiated by its staff, and that residents and prospective residents are informed of the policies
- Adult abuse and neglect
- Alzheimer's disease and other types of dementia
- Emergency procedures
- Aging process
- Assistance with ADLs and IADLs
- Particular needs or conditions if the ALC markets itself as providing special programming, staffing, or training on behalf of residents with particular needs or conditions

Annual Training: All staff and management must receive annual training in accordance with KRS 194A.719(2), which includes in-service education regarding Alzheimer's disease and other types of dementia.

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Employee Records

The forthcoming ALC regulation will establish requirements for employee records and regularly scheduled volunteers. The records must include:

- Evidence of current professional licensure, registration, or certification, if applicable.
- Documentation of orientation completed within thirty (30) days of hire.
- Documentation of annual training.
- Annual performance evaluations.
- Current job description, including qualification, responsibilities, and name of supervisor.
- Documentation of criminal background and registry checks.
- Incident reports, if applicable.
- Record of any health exams related to employment.

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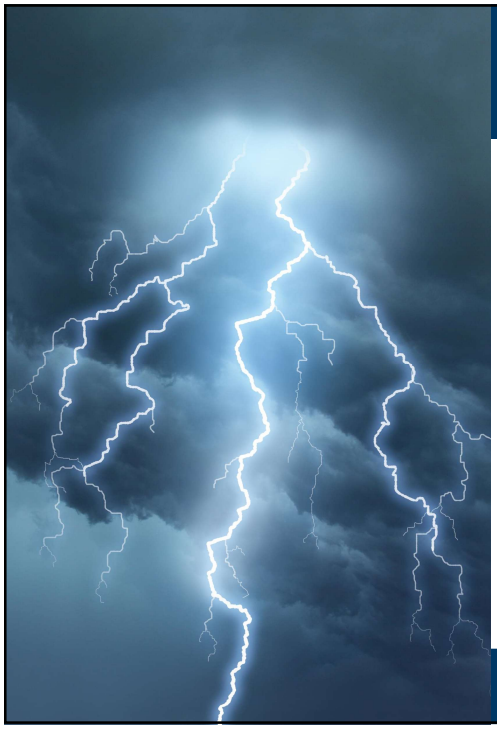

Disaster Planning/Emergency Preparedness Plan and Infection Control

- The forthcoming ALC regulation will require ALCs, ALCs-BH, and ALCs-DC to have a written emergency disaster plan that contains a plan for evacuation.
- Emergency and disaster training will be required as a topic covered during staff orientation and annual training.
- The forthcoming ALC regulation will also require ALCs, ALCs-BH, and ALCs-DC to have written policies on infection control practices that address the prevention of disease transmission and cleaning/disinfection methods.

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Resident Records

The forthcoming ALC regulation will require resident records to contain the following information

- Resident's name, date of birth, address, and telephone number.
- Name, address, and telephone number of the resident's legal representative or designated contact person.
- Names, addresses, and telephone numbers of the resident's health and medical service providers.
- Health information, including medical history, allergies, tuberculosis test results, vaccination information, and whether the provider is managing medications, treatments, or therapies that require documentation.
- The resident's advance directives, if any.
- Copies of any health care directives, guardianships, powers of attorney, or conservatorships.
- The resident's current and previous functional needs assessments and service plans.
- All records of communications pertinent to the resident's services.
- Documentation of significant changes in the resident's status and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or health care professional.
- Documentation of any incident or accident involving the resident and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or health care professional.
- Documentation that services have been provided as identified in the service plan.
- Documentation that the resident has received and reviewed the resident's rights.
- Documentation of complaints received and any resolution.
- Documentation of move-out or transfer to another setting, if applicable.
- Other documentation relevant to the resident's services or status.

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Delegation of Assisted Living Services

Except for ALCs that wish to remain "social model" facilities, the forthcoming regulation will establish requirements for:

- Having a registered nurse available for consultation by staff performing delegated nursing tasks.
- Training and demonstration of competency by unlicensed staff who will be performing delegated tasks.
- Supervision and supervisory review of unlicensed staff.

The forthcoming ALC regulation will also establish requirements for ALCs-BH and ALCs-BH that provide medication management services.

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ALC-DC

SB 11 created the following new statutes for ALCs-DC

- KRS 194A.7052, Additional services of assisted living community with dementia care -- Resident evaluation -- Activities -- Support services -- Access to secured outdoor space.
- KRS 194A.7061, Assisted living community with dementia care licensure criteria -- Exception -- Inspections.
- KRS 194A.7063, Voluntary relinquishment of license -- Obligations.
- KRS 194A.7065, Assisted living community with dementia care responsibilities.
- KRS 194A.708, Additional policy and procedure requirements for assisted living community with dementia care licensees.
- KRS 194A.7201, Continuing education requirements for manager of assisted living community with dementia care license.
- KRS 194A.7203, Person-centered care approach for dementia-trained staff -- Staffing levels -- Emergencies -- Staff trainer experience requirements -- Methods of instruction.
- KRS 194A.7205, Training requirements for assisted living community with dementia care -- Documentation.

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KRS 194A.7052

All ALCs-DC shall:

- Provide the services listed in KRS 194A.7052(1), including assistance with ADLs that address the needs of each resident with dementia, nonpharmacological practices that are person-centered and evidence informed, informational services to educate residents and their legal representatives or designated contacts, social activities, and basic health and health-related services;
- Evaluate each resident for engagement in activities and develop an individualized activity plan pursuant to KRS 194A.7052(2) and (3);
- Provide a selection of daily structured and non-structured activities in accordance with KRS 194A.7052(4);
- Evaluate behavioral symptoms that negatively impact the resident and others in the facility and comply with the requirements of KRS 194A.7052(5);
- Offer support services to the resident's family and others with significant relationships at least every six (6) months in accordance with KRS 194A.7052(6); and
- For dementia care units constructed after July 14, 2022, offer access to secured outdoor space in accordance with KRS 194A.7052(7).

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KRS 194A.7061

All ALCs-DC must provide services in a manner consistent with the requirements of KRS 194A.7061(1) – (3) as follows:

- If an applicant for licensure as an ALC-DC or its principals do not have experience in managing residents with dementia, the applicant must employ or contract with a consultant pursuant to terms determined by the applicant and consultant for at least the first six (6) months of operation.
- The consultant's role shall be to make recommendations on providing dementia care services consistent with the requirements of KRS Chapter 194A.
  - The consultant shall:
    - Possess two (2) years of work experience related to dementia, health care, gerontology, or an associated field; and
    - Have completed at least the core training required by KRS 194A.7205.
- The applicant must document an acceptable plan to address the consultant's identified concerns and either implement the recommendations or document in the plan any consultant recommendations that the applicant chooses not to implement.

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KRS 194A.7063

If an ALC-DC voluntarily terminates operations, the facility must relinquish its license and comply with the notification requirements and other steps for voluntary relinquishment established by KRS 194A.7063, including:

- Issuing a 60-day notice to the OIG and to all residents, including their designated contacts or legal representatives, of the planned closure;
- Submitting a transition plan to the OIG demonstrating how the current residents will be evaluated and assessed to reside in other settings;
- Making changes to service or care plans as appropriate to address any needs the residents may have with the transition;
- Providing follow-up notice to the OIG when the closure has been completed; and
- Making revisions to advertising materials and other information.

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KRS 194A.7065

In accordance with KRS 194A.7065, an ALC-DC is responsible for:

- The care and housing of persons with dementia;
- The provision of person-centered care that promotes each resident's dignity, independence, and comfort; and
- The supervision, training, and overall conduct of the staff.

All ALC-DC licensees must follow the ALC requirements and criteria established by KRS 194A.700 to 194A.729.

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KRS 194A.708

In addition to the policies and procedures required for ALCs, each ALC-DC licensee must develop and implement policies and procedures that address the following:

- Philosophy of how services are provided and implemented based upon the licensee's values, mission, and promotion of person-centered care;
- Evaluation of behavioral symptoms and design of supports for intervention plans, including but not limited to nonpharmacological practices that are person-centered and evidence-informed;
- Exit seeking and egress prevention;
- Medication management pursuant to orders from a resident's health care practitioner;
- Staff training specific to dementia care;
- Description of life enrichment and activity programs;
- Description of family support and engagement programs;
- Incontinence care;
- Limit the use of public address and intercom systems to emergencies;
- Transportation to and from off-site medical appointments; and
- Safekeeping of residents' possessions.

The policies and procedures must be provided to ALC-DC residents and their legal representatives or designated contacts at the time of move-in.

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KRS 194A.7201

The manager of an ALC-DC must complete at least ten (10) hours of dementia-specific training annually that includes the following topics:

- Medical management of dementia;
- Creating and maintaining supportive and therapeutic environments for residents with dementia; and
- Transitioning and coordinating services for residents with dementia.

KRS 194A.7201(2) identifies acceptable training methods such as classroom style training, Web-based training, workshops, etc.

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KRS 194A.7203

ALCs-DC must comply with the staffing standards established by KRS 194A.7203, including the requirement that only dementia-trained staff who have been instructed in the person-center care approach provide care for residents unless a temporary emergency situation exists.

- In an emergency and if trained staff are not available, the ALC-DC may assign staff who have not completed the required training.
- The emergency situation must be documented and address the:
  - Nature of the emergency;
  - Duration of the emergency; and
  - Names and positions of staff who provided coverage and assistance.

The ALC-DC must ensure that staff who provide support for residents with dementia demonstrate a basic understanding and ability to apply dementia training to the residents' emotional and unique health care needs using person-centered planning delivery.

ALC-DC staffing levels must be sufficient to meet the scheduled needs of residents. During nighttime hours, staffing levels must be based on the sleep patterns and needs of residents.

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KRS 194A.7205

In addition to the training required for all ALC staff pursuant to KRS 194A.719, ALCs-DC shall ensure compliance with the training requirements of KRS 194A.7205 for direct care staff who work in the facility's secured dementia care unit.

Specifically, all ALC-DC staff must receive at least eight (8) hours of dementia-specific orientation within the first thirty (30) days of working in the secured dementia care unit.

- Until this initial training is complete, an employee shall not provide direct care unless there is another employee on site who has completed the initial eight (8) hours of training on topics related to dementia care and who can act as a resource and assist as needed.
- The initial 8-hour dementia-specific orientation must include:
  - Information about the nature, progression, and management of Alzheimer's and other dementia illnesses and disorders;
  - Methods for creating an environment that minimizes challenging behavior from residents with Alzheimer's and other dementia illnesses and disorders;
  - Methods for identifying and minimizing safety risks to residents with Alzheimer's and other dementia illnesses and disorders; and
  - Methods for communicating with individuals with Alzheimer's and other dementia illnesses and disorders.

All ALC-DC direct care staff members shall receive an additional eight (8) hours of orientation training after the 8-hour initial training but still within the first thirty (30) days of caring for residents that includes at a minimum:

- General training, including: (1) Development and implementation of comprehensive and individual service plans; (2) Skills for recognizing physical and cognitive changes in residents; (3) General infection control principles; and (4) Emergency preparedness training; and
  - Specialized training in dementia care, including: (1) The nature of Alzheimer's and other dementia illnesses and disorders; (2) The unit's philosophy related to the care of residents with Alzheimer's and other dementia illnesses and disorders; (3) The unit's policies and procedures related to the care of residents with Alzheimer's and other dementia illnesses and disorders; (4) Behavioral problems commonly found in residents with Alzheimer's and other dementia illnesses and disorders; (5) Positive therapeutic interventions and activities; (6) Skills for maintaining the safety of the residents; and (7) The role of family in caring for residents with Alzheimer's and other dementia illnesses and disorders.

All ALC-DC direct care staff shall complete a minimum of eight (8) hours of specialized training in dementia care annually.

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Survey Process

All licensure review inspections are unannounced.

In accordance with KRS 194A.707(2), an on-site inspection is conducted:

- As part of initial licensure;
- Twenty-four (24) months following the date of the previous licensure inspection if the OIG did not find any violations that presented imminent danger to a resident that created substantial risk of death or serious mental or physical harm; and
- Twelve (12) months following the date of the previous licensure inspection if the OIG found violations of standards that presented imminent danger to a resident that created substantial risk of death or serious mental or physical harm.

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Procedures for Correcting Violations

In accordance with 902 KAR 20:008, Section 2(13), the OIG will notify a facility in writing of regulatory violations identified during an inspection. This notice is called a "Statement of Deficiencies" or "SOD".

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The facility is required to submit a "Plan of Correction" or "POC" to the OIG within ten (10) days of the SOD. The POC must:

- Be signed by the facility's administrator or a person designated by the licensee and specify:
  - The date by which the violation will be corrected; and
  - The specific measures to be utilized to correct the violation and ensure the violation will not recur.

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The OIG reviews the POC and notifies the facility in writing of its decision to:

- Accept the POC;
- Not accept the POC; or
- Deny, suspend, or revoke the license for substantial regulatory violations.

If the OIG does not accept the POC, the OIG must provide written notice to the facility:

- That identifies the specific reasons the POC is unacceptable; and
- Require an amended POC within ten (10) days.

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Upon review of an amended POC, the OIG notifies the facility in writing of its decision to:

- Accept the amended POC;
- Deny, suspend, or revoke the license for a substantial regulatory violation; or
- Require the facility to submit an acceptable POC.

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A facility that fails to submit an acceptable POC may be notified that the license will be denied, suspended, or revoked.

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Civil Monetary Penalties

In accordance with KRS 194A.772(5), the OIG is authorized to impose a civil monetary penalty (CMP) not to exceed $500 for each distinct violation that presents an imminent danger to an ALC resident and which creates substantial risk of death or serious mental or physical harm.

In determining the amount of the CMP, the OIG is required by KRS 194A.772(6) to consider:

- The gravity of the violation, the severity of the actual harm, and the extent to which the provisions of the applicable statutes or administrative regulations were violated;
- The reasonable diligence exercised by the licensee and efforts to correct violations;
- The number and type of previous violations committed by the licensee; and
- The amount of the imposed penalty necessary to ensure immediate and continued compliance.

KRS 194A.772(7) requires a CMP to be reduced by the dollar amount that the facility can verify was used to correct the deficiency if the condition resulting in the deficiency citation existed for less than thirty (30) days prior to the date of the citation.

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RegWatch

The OIG filed the proposed ALC regulation with the Legislative Research Commission on November 15, 2022.

To sign up with state government agencies, including the OIG or any other cabinet agency to receive proposed administrative regulations, you may register for RegWatch at the following link:

https://secure.kentucky.gov/regwatch/

Interested individuals may submit comments on regulations during the public comment period.

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Contact Information

Office of Inspector General
Division of Health Care
275 East Main Street, 5E-A
Frankfort, KY 40621

(502) 564-7963

Website:

https://chfs.ky.gov/agencies/os/oig/dhc/Pages/default.aspx

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