

SENATE BILL No. 460

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-2-7.

Synopsis: Assisted living establishments. Requires an assisted living establishment to register with the securities commissioner. Requires a housing with services contract to contain certain information. Provides that a person who knowingly or intentionally fails to comply with the registration requirements commits a Class A infraction.

Effective: July 1, 1998.

Riegsecker

January 14, 1998, read first time and referred to Committee on Planning and Public Services.

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Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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SENATE BILL No. 460



A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-7 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1998]:

4 **Chapter 7. Registration of Housing with Services**
5 **Establishments**

6 **Sec. 1. As used in this chapter,"commissioner" means the**
7 **securities commissioner as provided in IC 23-2-1-15(a).**

8 **Sec. 2. (a) As used in this chapter, "housing with services**
9 **establishment" means an establishment providing sleeping**
10 **accommodations to not less than four (4) residents and offering or**
11 **providing for a fee:**

12 **(1) at least one (1) regularly scheduled health related service;**
13 **or**

14 **(2) at least two (2) regularly scheduled supportive services;**
15 **whether offered or provided directly by the establishment or by**
16 **another person arranged for by the establishment.**

17 **(b) The term does not include the following:**



- 1 (1) A health facility licensed under IC 16-28-2.
 2 (2) A hospital licensed under IC 16-21.
 3 (3) A group home licensed under IC 12-17.4.
 4 (4) An establishment that serves as a shelter for battered
 5 women or other similar purpose.
 6 (5) Private homes in which the residents are related by
 7 kinship, law, or affinity with the providers of the services.
 8 (6) An organized condominium, cooperative, common interest
 9 community, or owner's association where at least eighty
 10 percent (80%) of the units that comprise the condominium,
 11 cooperative, or common interest community are occupied by
 12 individuals who are the owners, members, or shareholders of
 13 the units.

14 Sec. 2. As used in this chapter, "health related services" means
 15 home health services as defined under 16-27-5, professional
 16 nursing services, and the central storage and distribution of
 17 medications.

18 Sec. 3. (a) As used in this chapter, "supportive services" means
 19 help with personal laundry, handling or assisting with personal
 20 funds of the residents, or arranging for medical services, health
 21 related services, or social services.

22 (b) The term does not include making referrals, assisting a
 23 resident in contacting a service provider of the resident's choice, or
 24 contacting a service provider in an emergency.

25 Sec. 4. As used in this chapter, "person" means an individual or
 26 any legal business entity.

27 Sec. 5. As used in this chapter, "provider" means a person that
 28 operates a housing with services establishment.

29 Sec. 6. As used in this chapter, "resident" means an individual
 30 who has a contract to reside in a housing with services
 31 establishment.

32 Sec. 7. As used in this chapter, "solicit" means an action of a
 33 provider in seeking to have an individual become a resident of a
 34 housing with services establishment, including:

- 35 (1) personal, telephone, or mail communication or other
 36 communication directed to and received by an individual in
 37 Indiana; and
 38 (2) advertising in any media distributed or communicated by
 39 any means to individuals residing in Indiana.

40 Sec. 8. This chapter applies to any person who:

- 41 (1) enters into a contract or extends the term of an existing
 42 contract with an individual to reside in a housing with

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1 services establishment; or

2 (2) solicits the execution of a contract with individuals to
3 reside in a housing with services establishment.

4 **Sec. 9. (a) A provider shall register each housing with services
5 establishment with the commissioner. If a provider fails to register
6 a home, the provider may not:**

7 (1) enter into, or extend the term of, a contract with an
8 individual to reside in a housing with services establishment;

9 (2) solicit the execution, by a person residing within Indiana,
10 of a contract with an individual to reside in a housing with
11 services establishment; or

12 (3) use the term "assisted living" to describe the provider's
13 services and operations to the public.

14 **(b) The provider's application for registration must be filed with
15 the commissioner by the provider on forms prescribed by the
16 commissioner. The application must contain the following
17 information:**

18 (1) An initial disclosure statement, as described in section 15
19 of this chapter.

20 (2) The contract to be executed between the housing with
21 services establishment and the resident.

22 (3) Any other information required by the commissioner
23 under rules adopted under this chapter.

24 **(c) A registered establishment shall notify the commissioner
25 within thirty (30) days of any change in the business name or
26 address of the establishment, the name or mailing address of the
27 owner or owners, or the name or mailing address of the managing
28 agent. The commissioner may not charge a fee for submission of
29 the notice.**

30 **(d) Upon receipt of the application for registration, the
31 commissioner shall mark the application filed. Within sixty (60)
32 days of the filing of the application, the commissioner shall enter
33 an order registering the provider or rejecting the registration. If
34 an order of rejection is not entered within that sixty (60) day
35 period, the provider is considered registered unless the provider
36 has consented in writing to an extension of time. If an order of
37 rejection is not entered within the time as extended by consent, the
38 provider is considered registered.**

39 **(e) If the commissioner determines that the application for
40 registration complies with the requirements of this chapter, the
41 commissioner shall enter an order registering the provider. If the
42 commissioner determines that the requirements have not been met,**

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1 the commissioner shall notify the provider of the deficiencies and
 2 inform the provider that it has sixty (60) days to correct them. If
 3 the deficiencies are not corrected within sixty (60) days, the
 4 commissioner shall enter an order rejecting the registration. The
 5 order rejecting the registration must include the findings of fact
 6 upon which the order is based. The provider may petition for
 7 reconsideration, and is entitled to a hearing upon that petition.

8 **Sec. 10.** The housing with services establishment shall provide
 9 the following information to the commissioner to be registered:

10 (1) The business name, street address, and mailing address of
 11 the establishment.

12 (2) The name and mailing address of the owner or owners of
 13 the establishment. If the owner or owners are not natural
 14 persons, identification of the type of business entity of the
 15 owner or owners, and the name and addresses of the officers
 16 and members of the governing body, or comparable persons
 17 for other types of business entities of the owner or owners.

18 (3) The name and mailing address of the managing agent,
 19 whether through management agreement or lease
 20 arrangement, of the establishment, if different from the owner
 21 or owners, and the name of the on-site manager, if any.

22 (4) The name and address of at least one (1) individual who:
 23 (A) is responsible for dealing with the commissioner on all
 24 matters provided for in this chapter;
 25 (B) may be personally served all notices and orders; and
 26 (C) is authorized to accept service on behalf of the owner
 27 or owners and the managing agent, if any.

28 (5) The signature of the authorized representative of the
 29 owner or owners or, if the owner or owners are not natural
 30 persons, signatures of at least two (2) authorized
 31 representatives of each owner, one (1) of whom must be an
 32 officer of the owner. Personal service on the person identified
 33 under subdivision (4) by the owner or owners in the
 34 registration is considered service on the owner or owners, and
 35 is not a defense to any action that personal service was not
 36 made on each individual or business entity. The designation
 37 of an individual under this subdivision does not affect the
 38 legal responsibility of the owner or owners under this chapter.

39 **Sec. 11.** (a) A housing with services establishment may not
 40 operate unless:

41 (1) a written housing with services contract is executed
 42 between the establishment and each resident or resident's

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representative; and

(2) the establishment operates in accordance with the terms of the contract.

The resident or the resident's representative must be given a complete copy of the contract and all supporting documents and attachments and any changes whenever changes are made.

(b) A housing with services contract must include the following elements in the contract or through supporting documents or attachments in clear and understandable language:

(1) Name, street address, and mailing address of the housing with service establishment.

(2) The name and mailing address of the owner or owners of the housing with services establishment and, if the owner or owners are not natural persons, identification of the type of business entity of the owner or owners.

(3) The name and mailing address of the managing agent, through management agreement or lease arrangement, of the establishment, if different from the owner or owners.

(4) The name and address of at least one (1) individual who is authorized to accept service on behalf of the owner or owners and managing agent.

(5) A statement describing the registration and licensure status of the housing with services establishment and any provider providing health related or supportive services under arrangement with the establishment.

(6) The term of the contract.

(7) A description of the services to be provided to the resident in the base rate to be paid by the resident.

(8) A description of any additional services available for an additional fee from the housing with services establishment directly or through arrangements with the establishment.

(9) The fee schedules outlining the cost of any additional services.

(10) A description of the process through which the contract may be modified, amended, or terminated.

(11) A description of the housing with services establishment's complaint resolution process available to the residents.

(12) The resident's designated representative, if any.

(13) The housing with services establishment's referral procedures if the contract is terminated.

(14) The criteria used by the housing with services establishment to determine who may continue to reside in the

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establishment. The criteria must address the following:

(A) When a resident must be transferred because the establishment and the resident are unable to develop a means for assuring that the resident is able to respond to an emergency in a manner that is consistent with local fire and safety requirements.

(B) When the establishment is unable to assure that the resident’s physical, mental, and psychosocial needs can be met.

(15) A description of the process for assuring that the resident’s needs are assessed on admission and periodically thereafter in conjunction with the resident and the resident’s representative and for assuring that the resident’s physical, mental, and psychosocial needs are met within the terms of the contract criteria for residence as provided in subdivision (14).

(16) The billing and payment procedures and requirements.

(17) The contract must state that:

(A) except as stated in the contract, residency in the housing with services establishment may not be terminated due to changes in a resident’s health or care needs;

(B) the ability of a resident to engage in activities away from the establishment regardless of the time, duration, and distance of the activities may not be restricted; and

(C) except to protect the rights and activities of other residents, the establishment may not restrict the ability of the resident to have visitors and to receive family members and guests.

Sec. 12. Unless extended by the written consent of the commissioner, each year after the initial year in which a home is registered under section 9 of this chapter, the provider shall file with the commissioner within four (4) months after the end of the provider's fiscal year an annual registration application.

Sec. 13. (a) A provider shall amend its initial registration application filed with the commissioner under sections 9 and 10 of this chapter at any time if necessary to prevent the initial or annual registration application from containing any material misstatement of fact or omission of a material fact. As used in this subsection, "omission of a material fact" means the failure to state a material fact required to be stated in any disclosure statement or registration in order to make the disclosure statement or registration, in light of the circumstances under which they were

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1 made, not misleading.

2 (b) Upon the sale of a housing with services establishment to a
3 new provider, the new provider shall amend the currently filed
4 registration application to reflect the fact of sale and any other fact
5 that would be required to be disclosed in registration application.

6 Sec. 14. (a) The commissioner may deny, revoke, or refuse to
7 renew registration of a provider if the commissioner finds that:

8 (1) the provider willfully violated any provision of this
9 chapter or any rule or order adopted under this chapter;

10 (2) the provider failed to file an annual registration
11 application required by section 12 of this chapter; or

12 (3) the provider failed to comply with the terms of a cease and
13 desist order of the commissioner.

14 (b) Findings of fact in support of an order under this section
15 must be accompanied by a concise and explicit statement of the
16 underlying facts supporting the findings.

17 (c) If the commissioner finds, after notice and hearing, that the
18 provider has committed a violation for which revocation could be
19 ordered, the commissioner may first issue a cease and desist order.
20 If the cease and desist order is not effective in remedying the
21 violation, the commissioner may, after notice and hearing, order
22 the registration revoked.

23 (d) Except as provided in subsection (c), an order may not be
24 entered under this section unless there has been:

25 (1) appropriate prior notice to the provider;

26 (2) opportunity for hearing; and

27 (3) written findings of fact and conclusions of law.

28 (e) The commissioner may vacate or modify an order if the
29 commissioner finds that the conditions that prompted entry have
30 changed or that it is in the public interest to do so.

31 Sec. 15. (a) The commissioner shall develop a standardized
32 disclosure form to be completed by the housing with services
33 establishment and submitted as part of the registration application.

34 (b) The standardized disclosure form must include the
35 following:

36 (1) The name and mailing address of the owner or owners of
37 the housing with services establishment and, if the owner or
38 owners are not individuals, identification of the type of
39 business entity of the owner or owners.

40 (2) The name and mailing address of the managing agent,
41 through management agreement or lease arrangement, of the
42 establishment, if different from the owner or owners.



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- 1 **(3) A description of the services to be provided to the resident**
- 2 **in the base rate to be paid by the resident.**
- 3 **(4) A description of any additional services available for an**
- 4 **additional fee from the establishment directly or through**
- 5 **arrangements with the establishment.**
- 6 **(5) The fee schedules outlining the cost of any additional**
- 7 **services.**
- 8 **(6) A description of the process through which the contract**
- 9 **may be modified, amended, or terminated.**
- 10 **(7) A description of the establishment’s complaint resolution**
- 11 **process available to the residents and the establishment’s**
- 12 **referral procedures if the contract is terminated.**
- 13 **(8) The criteria used by the establishment to determine who**
- 14 **may continue to reside in the housing with services**
- 15 **establishment.**
- 16 **Sec. 16. A person who knowingly or intentionally fails to comply**
- 17 **with any of the registration requirements of this chapter commits**
- 18 **a Class A infraction.**
- 19 **Sec. 17. (a) Except as provided in subsection (b), the**
- 20 **commissioner may adopt rules under IC 4-22-2 to assess fees of**
- 21 **housing with services establishments on a per unit basis to cover**
- 22 **costs associated with the registration and enforcement provisions**
- 23 **of this chapter.**
- 24 **(b) The commissioner may not assess registration fees for all**
- 25 **residential care facilities licensed under IC 16-28.**
- 26 **Sec. 18. The commissioner shall adopt under IC 4-22-2 rules**
- 27 **necessary to carry out this chapter.**

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