

January 30, 1998

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## SENATE BILL No. 436

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DIGEST OF SB 436 (Updated January 28, 1998 10:16 am - DI 78)

**Citations Affected:** IC 12-7; IC 12-10; noncode.

**Synopsis:** Requires a housing with services establishment to register with the director of the division of disabilities, aging and rehabilitative services. Requires a housing with services establishment contract to contain certain information. Requires a housing with services establishment to use a standardized disclosure form. Provides that a person who knowingly or intentionally fails to comply with the registration requirements commits a Class A infraction. Provides that the authority of the state department of health to regulate home health agencies and health facilities is not precluded. Provides that housing with services establishments must be registered before July 1, 1999.

**Effective:** July 1, 1998.

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January 13, 1998, read first time and referred to Committee on Planning and Public Services.  
January 29, 1998, amended, reported favorably — Do Pass.

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SB 436—LS 7195/DI 77



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January 30, 1998

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.

## SENATE BILL No. 436

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

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

- 1 SECTION 1. IC 12-7-2-64 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 64. "Director" refers to  
3 the following:  
4 (1) With respect to a particular division, the director of the  
5 division.  
6 (2) With respect to a particular state institution, the director who  
7 has administrative control of and responsibility for the state  
8 institution.  
9 (3) **For purposes of IC 12-10-15, the term refers to the**  
10 **director of the division of disabilities, aging, and rehabilitative**  
11 **services.**  
12 (↔) (4) For purposes of IC 12-25, the term refers to the director of  
13 the division of mental health.  
14 (↔) (5) For purposes of IC 12-26, the term:  
15 (A) refers to the director who has administrative control of and  
16 responsibility for the appropriate state institution; and  
17 (B) includes the director's designee.

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1           ~~(5)~~ (6) If subdivisions (1) through ~~(4)~~ (5) do not apply, the term  
2           refers to the director of any of the divisions.

3           SECTION 2. IC 12-7-2-103.5 IS ADDED TO THE INDIANA  
4           CODE AS A NEW SECTION TO READ AS FOLLOWS  
5           [EFFECTIVE JULY 1, 1998]: **Sec. 103.5. "Health related services",**  
6           **for purposes of IC 12-10-15, has the meaning set forth in**  
7           **IC 12-10-15-2.**

8           SECTION 3. IC 12-7-2-110.7 IS ADDED TO THE INDIANA  
9           CODE AS A NEW SECTION TO READ AS FOLLOWS  
10          [EFFECTIVE JULY 1, 1998]: **Sec. 110.7. "Housing with services**  
11          **establishment", for purposes of IC 12-10-15, has the meaning set**  
12          **forth in IC 12-10-15-3.**

13          SECTION 4. IC 12-7-2-135.4 IS ADDED TO THE INDIANA  
14          CODE AS A NEW SECTION TO READ AS FOLLOWS  
15          [EFFECTIVE JULY 1, 1998]: **Sec. 135.4. "Operator", for purposes**  
16          **of IC 12-10-15, has the meaning set forth in IC 12-10-15-4.**

17          SECTION 5. IC 12-7-2-164 IS AMENDED TO READ AS  
18          FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 164. "Resident" has the  
19          following meaning:

20                 **(1) For purposes of IC 12-10-15, the meaning set forth in**  
21                 **IC 12-10-15-5.**

22                 ~~(1)~~ (2) For purposes of IC 12-16, except IC 12-16-1, an individual  
23                 who has actually resided in Indiana for at least ninety (90) days.

24                 ~~(2)~~ (3) For purposes of IC 12-20-8, the meaning set forth in  
25                 IC 12-20-8-1.

26                 ~~(3)~~ (4) For purposes of IC 12-24-5, the meaning set forth in  
27                 IC 12-24-5-1.

28          SECTION 6. IC 12-7-2-180 IS AMENDED TO READ AS  
29          FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 180. "**Solicit**" and  
30          "**solicitation**" **have the following meaning:**

31                 **(1) For purposes of IC 12-10-15, the meaning set forth in**  
32                 **IC 12-10-15-6.**

33                 (2) For purposes of IC 12-15-25-1, ~~has~~ the meaning set forth in  
34                 IC 12-15-25-1.

35          SECTION 7. IC 12-7-2-189.3 IS ADDED TO THE INDIANA  
36          CODE AS A NEW SECTION TO READ AS FOLLOWS  
37          [EFFECTIVE JULY 1, 1998]: **Sec. 189.3. "Supportive services", for**  
38          **purposes of IC 12-10-15, has the meaning set forth in**  
39          **IC 12-10-15-7.**

40          SECTION 8. IC 12-10-15 IS ADDED TO THE INDIANA CODE  
41          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
42          JULY 1, 1998]:

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1 Chapter 15. Registration of Housing with Services  
2 Establishments

3 Sec. 1. This chapter applies to a person who:

4 (1) enters into a contract or extends the term of an existing  
5 contract with an individual to reside in a housing with  
6 services establishment; or

7 (2) solicits the execution of a contract with an individual to  
8 reside in a housing with services establishment.

9 Sec. 2. As used in this chapter, "health related services" means  
10 home health services as listed under IC 16-27-1-5(b) and  
11 IC 16-27-1-5(c), attendant and personal care services, professional  
12 nursing services, and the central storage and distribution of  
13 medications.

14 Sec. 3. (a) As used in this chapter, "housing with services  
15 establishment" means an establishment providing sleeping  
16 accommodations to at least five (5) residents and offering or  
17 providing for a fee:

18 (1) at least one (1) regularly scheduled health related service;  
19 or

20 (2) at least two (2) regularly scheduled supportive services;  
21 whether offered or provided directly by the establishment or by  
22 another person arranged for by the establishment.

23 (b) The term does not include the following:

24 (1) A comprehensive care facility licensed under IC 16-28-2.

25 (2) A hospital licensed under IC 16-21.

26 (3) A group home licensed under IC 12-17.4 or IC 12-28-4.

27 (4) An establishment that serves as a shelter for battered  
28 women or other similar purpose.

29 (5) Private homes in which the residents are related by  
30 kinship, law, or affinity with the person offering the services.

31 (6) An organized condominium, cooperative, common interest  
32 community, or owner's association where at least eighty  
33 percent (80%) of the units that comprise the condominium,  
34 cooperative, or common interest community are occupied by  
35 individuals who are the owners, members, or shareholders of  
36 the units.

37 Sec. 4. As used in this chapter, "operator" means a person that  
38 operates a housing with services establishment.

39 Sec. 5. As used in this chapter, "resident" means an individual  
40 who has a contract to reside in a housing with services  
41 establishment.

42 Sec. 6. As used in this chapter, "solicit" means an action of an

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1 operator in seeking to have an individual become a resident of a  
2 housing with services establishment. The term includes:

- 3 (1) personal, telephone, or mail communication or other  
4 communication directed to and received by an individual in  
5 Indiana; and  
6 (2) advertising in any media distributed or communicated by  
7 any means to individuals residing in Indiana.

8 **Sec. 7.** As used in this chapter, "supportive services" means help  
9 with personal laundry, handling or assisting with personal funds  
10 of the residents, or arranging for medical services, health related  
11 services, or social services. The term does not include making  
12 referrals, assisting a resident in contacting a service provider of the  
13 resident's choice, or contacting a service provider in an emergency.

14 **Sec. 8. (a)** An operator shall register each housing with services  
15 establishment with the director. If an operator fails to register a  
16 housing with services establishment, the operator may not:

- 17 (1) enter into or extend the term of a contract with an  
18 individual to reside in a housing with services establishment;  
19 (2) solicit the execution, by a person residing within Indiana,  
20 of a contract with an individual to reside in a housing with  
21 services establishment; or  
22 (3) use the term "assisted living" to describe the housing with  
23 services establishment's services and operations to the public.

24 **(b)** The operator's application for registration must be filed with  
25 the director by the operator on forms prescribed by the director.  
26 The application must contain the following information:

- 27 (1) An initial disclosure statement, as described in section 15  
28 of this chapter.  
29 (2) The contract to be executed between the housing with  
30 services establishment and the resident.  
31 (3) Any other information required by the director under this  
32 chapter.

33 **(c)** An operator of a registered housing with services  
34 establishment shall notify the director within thirty (30) days after  
35 a change in the:

- 36 (1) business name or address of the establishment;  
37 (2) name or mailing address of the owner or owners; or  
38 (3) name or mailing address of the managing agent.

39 The director may not charge a fee for submission of the notice.

40 **(d)** Upon receipt of an application for registration, the director  
41 shall mark the application filed. Within sixty (60) days after the  
42 filing of the application, the director shall enter an order



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1 registering the housing with services establishment or rejecting the  
 2 registration. If an order of rejection is not entered within the sixty  
 3 (60) day period, the housing with services establishment is  
 4 considered registered under this chapter unless the operator has  
 5 consented in writing to an extension of time. If an order of  
 6 rejection is not entered within the time as extended by consent, the  
 7 housing with services establishment is considered registered under  
 8 this chapter.

9 (e) If the director determines that an application for registration  
 10 complies with this chapter, the director shall enter an order  
 11 registering the housing with services establishment. If the director  
 12 determines that the requirements of this chapter have not been  
 13 met, the director shall notify the operator of the requirements that  
 14 must be met and inform the operator that it has sixty (60) days to  
 15 meet the requirements. If the requirements are not met by the  
 16 operator within sixty (60) days after the operator receives notice  
 17 under this subsection, the director shall enter an order rejecting  
 18 the operator's registration for the housing with services  
 19 establishment. The order rejecting the registration must include  
 20 the findings of fact upon which the order is based. The operator  
 21 may petition for reconsideration and is entitled to a hearing upon  
 22 that petition.

23 **Sec. 9.** An operator shall provide the following information  
 24 concerning the operator's housing for services establishment to the  
 25 director with the operator's application for registration:

- 26 (1) The business name, street address, and mailing address of  
 27 the establishment.  
 28 (2) The name and mailing address of the owner or owners of  
 29 the establishment. If the owner or owners are not natural  
 30 persons, identification of the type of business entity of the  
 31 owner or owners, and the name and addresses of the officers  
 32 and members of the governing body, or comparable persons  
 33 for other types of business entities of the owner or owners.  
 34 (3) The name and mailing address of the managing agent,  
 35 whether through management agreement or lease  
 36 arrangement, of the establishment, if different from the owner  
 37 or owners, and the name of the on-site manager, if any.  
 38 (4) The name and address of at least one (1) individual who:  
 39 (A) is responsible for dealing with the director on all  
 40 matters subject to this chapter;  
 41 (B) may be personally served all notices and orders; and  
 42 (C) is authorized to accept service on behalf of the owner



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or owners and the managing agent, if any.

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

Sec. 10. (a) A housing with services establishment may not operate unless:

- (1) a written housing with services contract is executed between the establishment and each resident or resident's 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 establishment 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 services 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 person providing health related or supportive services under arrangement with the operator.
- (6) The term of the contract.



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**(7) A description of the services to be provided to the resident in the base rate to be paid by the resident or on the resident's behalf.**

**(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 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.**

**(c) The housing with services establishment contract must state that:**

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

**(2) 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;**

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1 (3) except to protect the rights and activities of other  
 2 residents, the housing with services establishment may not  
 3 restrict the ability of the resident to have visitors and to  
 4 receive family members and guests; and

5 (4) except as stated in the contract and identified in the  
 6 disclosure form, an operator may not:

7 (A) restrict the ability of a resident to use a home health  
 8 agency, home health provider, or case management service  
 9 of the resident's choice; or

10 (B) require a resident to use home health services.

11 (d) Except where the resident's health or safety or the health or  
 12 safety of others are endangered, an operator shall provide at least  
 13 thirty (30) days notice to the resident or the resident's designated  
 14 representative prior to termination of residency.

15 **Sec. 11. The division, in consultation with residents, residents'**  
 16 **representatives, and operators, shall do the following:**

17 (1) Create a mediation process to assist in resolving contract  
 18 disputes between residents and housing with services  
 19 establishments.

20 (2) Adopt procedures to implement the registration process.

21 (3) Adopt procedures for securing and recording complaints  
 22 and endorsements filed by residents, residents' designated  
 23 representatives, and family members.

24 **Sec. 12. Unless extended by the written consent of the director,**  
 25 **each year after the initial year in which an operator is registered**  
 26 **under section 8 of this chapter, the operator shall file with the**  
 27 **director within four (4) months after the end of the operator's**  
 28 **fiscal year an annual registration application.**

29 **Sec. 13. (a) As used in this subsection, "omission of a material**  
 30 **fact" means the failure to state a material fact required to be stated**  
 31 **in any disclosure statement or registration in order to make the**  
 32 **disclosure statement or registration, in light of the circumstances**  
 33 **under which they were made, not misleading. An operator shall**  
 34 **amend its initial registration application filed with the director**  
 35 **under sections 8 and 9 of this chapter at any time if necessary to**  
 36 **prevent the initial or annual registration application from**  
 37 **containing any material misstatement of fact or omission of a**  
 38 **material fact.**

39 (b) Upon the sale of a housing with services establishment to a  
 40 new owner, the new owner shall amend the currently filed  
 41 registration application to reflect the fact of sale and any other fact  
 42 that is required to be disclosed in the registration application.



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1           **Sec. 14. (a) The director may deny, revoke, or refuse to renew**  
 2 **the registration of a housing with services establishment if the**  
 3 **director finds that the operator:**

- 4           (1) **willfully violated this chapter or a rule adopted or an**  
 5 **order entered under this chapter;**  
 6           (2) **failed to file an annual registration application required by**  
 7 **section 12 of this chapter; or**  
 8           (3) **failed to comply with the terms of a cease and desist order**  
 9 **of the director.**

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

13           **(c) If the director finds, after notice and hearing, that an**  
 14 **operator has committed a violation for which revocation of**  
 15 **registration may be ordered, the director may first issue a cease**  
 16 **and desist order. If the cease and desist order is not effective in**  
 17 **remediating the violation, the director may, after notice and hearing,**  
 18 **order the housing with services establishment's registration**  
 19 **revoked.**

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

- 22           (1) **appropriate prior notice to the operator;**  
 23           (2) **opportunity for hearing; and**  
 24           (3) **written findings of fact and conclusions of law.**

25           **(e) The director may vacate or modify an order if the director**  
 26 **finds that the conditions that prompted entry of the order have**  
 27 **changed or that it is in the public interest to do so.**

28           **Sec. 15. (a) The director shall develop a standardized disclosure**  
 29 **form to be completed by the housing with services establishment**  
 30 **and submitted as part of the registration application.**

31           **(b) The standardized disclosure form must include the**  
 32 **following:**

- 33           (1) **The name and mailing address of the owner or owners of**  
 34 **the housing with services establishment and, if the owner or**  
 35 **owners are not individuals, identification of the type of**  
 36 **business entity of the owner or owners.**  
 37           (2) **The name and mailing address of the managing agent,**  
 38 **through management agreement or lease arrangement, of the**  
 39 **establishment, if different from the owner or owners.**  
 40           (3) **A description of the services to be provided to the resident**  
 41 **in the base rate to be paid by the resident or on the resident's**  
 42 **behalf.**



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- 1           (4) A description of additional services available for an
- 2           additional fee from the establishment directly or through
- 3           arrangements with the establishment.
- 4           (5) Fee schedules outlining the cost of additional services.
- 5           (6) A description of the process through which the contract
- 6           may be modified, amended, or terminated.
- 7           (7) A description of the establishment’s complaint resolution
- 8           process available to the residents and the establishment’s
- 9           referral procedures if the contract is terminated.
- 10          (8) The criteria used by the establishment to determine who
- 11          may continue to reside in the housing with services
- 12          establishment.

13           (c) The disclosure form must be provided to a prospective

14          resident or prospective resident's legal guardian and must be made

15          readily available to a resident or a resident's legal guardian.

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 director

20          may adopt rules under IC 4-22-2 to assess fees of housing with

21          services establishments on a per living unit basis to cover costs

22          associated with the registration and enforcement provisions of this

23          chapter.

24          (b) The director may take into consideration other fees paid to

25          the state for licensing of housing with services establishments in

26          determining fees assessed under this chapter.

27          Sec. 18. This chapter does not preclude the authority of the state

28          department of health to regulate:

- 29           (1) a home health agency, as provided in IC 16-27 and rules
- 30           adopted under IC 16-27; or
- 31           (2) a health facility, as provided in IC 16-28 and rules adopted
- 32           under IC 16-28.

33          Sec. 19. The director shall adopt rules under IC 4-22-2

34          necessary to carry out this chapter.

35          SECTION 9. [EFFECTIVE JULY 1, 1998] (a) The director of the

36          division of disabilities, aging, and rehabilitative services shall

37          develop the standardized disclosure form specified under

38          IC 12-10-15-15, as added by this act, and the process and

39          procedures specified in IC 12-10-15-11, as added by this act, before

40          January 1, 1999.

41          (b) A housing with services establishment (as defined by

42          IC 12-10-15-3, as added by this act) is not required to be registered

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1       **under IC 12-10-15, as added by this act, before July 1, 1999.**  
2       **(c) This SECTION expires July 1, 1999.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Planning and Public Services, to which was referred Senate Bill 436, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to Senate Bill 436 as introduced.)

JOHNSON, Chairperson

Committee Vote: Yeas 7, Nays 0.

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