

# COMMITTEE REPORT

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## MR. PRESIDENT:

The Senate Committee on Planning and Public Services, to which was referred Senate Bill No. 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:

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

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

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

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

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

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

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

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

26 ~~(2)~~ (3) For purposes of IC 12-20-8, the meaning set forth in  
 27 IC 12-20-8-1.

28 ~~(3)~~ (4) For purposes of IC 12-24-5, the meaning set forth in  
 29 IC 12-24-5-1.

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

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

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

37 SECTION 7. IC 12-7-2-189.3 IS ADDED TO THE INDIANA  
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS

1 [EFFECTIVE JULY 1, 1998]: **Sec. 189.3. "Supportive services", for**  
 2 **purposes of IC 12-10-15, has the meaning set forth in**  
 3 **IC 12-10-15-7.**

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

7 **Chapter 15. Registration of Housing with Services**  
 8 **Establishments**

9 **Sec. 1. This chapter applies to a person who:**

- 10 (1) enters into a contract or extends the term of an existing  
 11 contract with an individual to reside in a housing with  
 12 services establishment; or  
 13 (2) solicits the execution of a contract with an individual to  
 14 reside in a housing with services establishment.

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

20 **Sec. 3. (a) As used in this chapter, "housing with services**  
 21 **establishment" means an establishment providing sleeping**  
 22 **accommodations to at least five (5) residents and offering or**  
 23 **providing for a fee:**

- 24 (1) at least one (1) regularly scheduled health related service;  
 25 or

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

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

- 30 (1) A comprehensive care facility licensed under IC 16-28-2.  
 31 (2) A hospital licensed under IC 16-21.  
 32 (3) A group home licensed under IC 12-17.4 or IC 12-28-4.  
 33 (4) An establishment that serves as a shelter for battered  
 34 women or other similar purpose.  
 35 (5) Private homes in which the residents are related by  
 36 kinship, law, or affinity with the person offering the services.  
 37 (6) An organized condominium, cooperative, common  
 38 interest community, or owner's association where at least

1           **eighty percent (80%) of the units that comprise the**  
 2           **condominium, cooperative, or common interest community**  
 3           **are occupied by individuals who are the owners, members, or**  
 4           **shareholders of the units.**

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

7           **Sec. 5. As used in this chapter, "resident" means an individual**  
 8           **who has a contract to reside in a housing with services**  
 9           **establishment.**

10          **Sec. 6. As used in this chapter, "solicit" means an action of an**  
 11          **operator in seeking to have an individual become a resident of a**  
 12          **housing with services establishment. The term includes:**

13               **(1) personal, telephone, or mail communication or other**  
 14               **communication directed to and received by an individual in**  
 15               **Indiana; and**

16               **(2) advertising in any media distributed or communicated by**  
 17               **any means to individuals residing in Indiana.**

18          **Sec. 7. 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. The term does not include**  
 22          **making referrals, assisting a resident in contacting a service**  
 23          **provider of the resident's choice, or contacting a service provider**  
 24          **in an emergency.**

25          **Sec. 8. (a) An operator shall register each housing with**  
 26          **services establishment with the director. If an operator fails to**  
 27          **register a housing with services establishment, the operator may**  
 28          **not:**

29               **(1) enter into or extend the term of a contract with an**  
 30               **individual to reside in a housing with services establishment;**  
 31               **(2) solicit the execution, by a person residing within Indiana,**  
 32               **of a contract with an individual to reside in a housing with**  
 33               **services establishment; or**

34               **(3) use the term "assisted living" to describe the housing**  
 35               **with services establishment's services and operations to the**  
 36               **public.**

37          **(b) The operator's application for registration must be filed**  
 38          **with the director by the operator on forms prescribed by the**

1       **director. The application must contain the following information:**

2               **(1) An initial disclosure statement, as described in section 15**  
3               **of this chapter.**

4               **(2) The contract to be executed between the housing with**  
5               **services establishment and the resident.**

6               **(3) Any other information required by the director under**  
7               **this chapter.**

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

11               **(1) business name or address of the establishment;**

12               **(2) name or mailing address of the owner or owners; or**

13               **(3) name or mailing address of the managing agent.**

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

15               **(d) Upon receipt of an application for registration, the director**  
16       **shall mark the application filed. Within sixty (60) days after the**  
17       **filing of the application, the director shall enter an order**  
18       **registering the housing with services establishment or rejecting the**  
19       **registration. If an order of rejection is not entered within the sixty**  
20       **(60) day period, the housing with services establishment is**  
21       **considered registered under this chapter unless the operator has**  
22       **consented in writing to an extension of time. If an order of**  
23       **rejection is not entered within the time as extended by consent, the**  
24       **housing with services establishment is considered registered under**  
25       **this chapter.**

26               **(e) If the director determines that an application for**  
27       **registration complies with this chapter, the director shall enter an**  
28       **order registering the housing with services establishment. If the**  
29       **director determines that the requirements of this chapter have not**  
30       **been met, the director shall notify the operator of the requirements**  
31       **that must be met and inform the operator that it has sixty (60) days**  
32       **to meet the requirements. If the requirements are not met by the**  
33       **operator within sixty (60) days after the operator receives notice**  
34       **under this subsection, the director shall enter an order rejecting**  
35       **the operator's registration for the housing with services**  
36       **establishment. The order rejecting the registration must include**  
37       **the findings of fact upon which the order is based. The operator**  
38       **may petition for reconsideration and is entitled to a hearing upon**

1 that petition.

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

5 (1) **The business name, street address, and mailing address**  
 6 **of the establishment.**

7 (2) **The name and mailing address of the owner or owners of**  
 8 **the establishment. If the owner or owners are not natural**  
 9 **persons, identification of the type of business entity of the**  
 10 **owner or owners, and the name and addresses of the officers**  
 11 **and members of the governing body, or comparable persons**  
 12 **for other types of business entities of the owner or owners.**

13 (3) **The name and mailing address of the managing agent,**  
 14 **whether through management agreement or lease**  
 15 **arrangement, of the establishment, if different from the**  
 16 **owner or owners, and the name of the on-site manager, if**  
 17 **any.**

18 (4) **The name and address of at least one (1) individual who:**  
 19 (A) **is responsible for dealing with the director on all**  
 20 **matters subject to this chapter;**  
 21 (B) **may be personally served all notices and orders; and**  
 22 (C) **is authorized to accept service on behalf of the**  
 23 **owner or owners and the managing agent, if any.**

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

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

38 (1) **a written housing with services contract is executed**

1           **between the establishment and each resident or resident's**  
2           **representative; and**

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

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

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

12           **(1) Name, street address, and mailing address of the housing**  
13           **with services establishment.**

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

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

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

24           **(5) A statement describing the registration and licensure**  
25           **status of the housing with services establishment and any**  
26           **person providing health related or supportive services under**  
27           **arrangement with the operator.**

28           **(6) The term of the contract.**

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

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

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

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

- 1           **(11) A description of the housing with services**
- 2           **establishment’s complaint resolution process available to the**
- 3           **residents.**
- 4           **(12) The resident’s designated representative, if any.**
- 5           **(13) The housing with services establishment’s referral**
- 6           **procedures if the contract is terminated.**
- 7           **(14) The criteria used by the housing with services**
- 8           **establishment to determine who may continue to reside in the**
- 9           **establishment. The criteria must address the following:**
- 10               **(A) When a resident must be transferred because the**
- 11               **establishment and the resident are unable to develop a**
- 12               **means for assuring that the resident is able to respond**
- 13               **to an emergency in a manner that is consistent with local**
- 14               **fire and safety requirements.**
- 15               **(B) When the establishment is unable to assure that the**
- 16               **resident’s physical, mental, and psychosocial needs can**
- 17               **be met.**
- 18           **(15) A description of the process for assuring that the**
- 19           **resident’s needs are assessed on admission and periodically**
- 20           **thereafter in conjunction with the resident and the resident’s**
- 21           **representative and for assuring that the resident’s physical,**
- 22           **mental, and psychosocial needs are met within the terms of**
- 23           **the contract criteria for residence as provided in subdivision**
- 24           **(14).**
- 25           **(16) The billing and payment procedures and requirements.**
- 26           **(c) The housing with services establishment contract must**
- 27           **state that:**
- 28               **(1) except as stated in the contract, residency in the housing**
- 29               **with services establishment may not be terminated due to a**
- 30               **change in a resident’s health or care needs;**
- 31               **(2) the ability of a resident to engage in activities away from**
- 32               **the establishment regardless of the time, duration, and**
- 33               **distance of the activities may not be restricted;**
- 34               **(3) except to protect the rights and activities of other**
- 35               **residents, the housing with services establishment may not**
- 36               **restrict the ability of the resident to have visitors and to**
- 37               **receive family members and guests; and**
- 38               **(4) except as stated in the contract and identified in the**

- 1 disclosure form, an operator may not:
- 2 (A) restrict the ability of a resident to use a home health
- 3 agency, home health provider, or case management
- 4 service of the resident's choice; or
- 5 (B) require a resident to use home health services.

6 (d) Except where the resident's health or safety or the health

7 or safety of others are endangered, an operator shall provide at

8 least thirty (30) days notice to the resident or the resident's

9 designated representative prior to termination of residency.

10 Sec. 11. The division, in consultation with residents, residents'

11 representatives, and operators, shall do the following:

- 12 (1) Create a mediation process to assist in resolving contract
- 13 disputes between residents and housing with services
- 14 establishments.
- 15 (2) Adopt procedures to implement the registration process.
- 16 (3) Adopt procedures for securing and recording complaints
- 17 and endorsements filed by residents, residents' designated
- 18 representatives, and family members.

19 Sec. 12. Unless extended by the written consent of the director,

20 each year after the initial year in which an operator is registered

21 under section 8 of this chapter, the operator shall file with the

22 director within four (4) months after the end of the operator's

23 fiscal year an annual registration application.

24 Sec. 13. (a) As used in this subsection, "omission of a material

25 fact" means the failure to state a material fact required to be stated

26 in any disclosure statement or registration in order to make the

27 disclosure statement or registration, in light of the circumstances

28 under which they were made, not misleading. An operator shall

29 amend its initial registration application filed with the director

30 under sections 8 and 9 of this chapter at any time if necessary to

31 prevent the initial or annual registration application from

32 containing any material misstatement of fact or omission of a

33 material fact.

34 (b) Upon the sale of a housing with services establishment to

35 a new owner, the new owner shall amend the currently filed

36 registration application to reflect the fact of sale and any other fact

37 that is required to be disclosed in the registration application.

38 Sec. 14. (a) The director may deny, revoke, or refuse to renew

1 the registration of a housing with services establishment if the  
2 director finds that the operator:

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

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

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

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

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

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

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

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

- 32 (1) The name and mailing address of the owner or owners of  
33 the housing with services establishment and, if the owner or  
34 owners are not individuals, identification of the type of  
35 business entity of the owner or owners.  
36 (2) The name and mailing address of the managing agent,  
37 through management agreement or lease arrangement, of  
38 the establishment, if different from the owner or owners.

- 1           **(3) A description of the services to be provided to the**
- 2           **resident in the base rate to be paid by the resident or on the**
- 3           **resident's behalf.**
- 4           **(4) A description of additional services available for an**
- 5           **additional fee from the establishment directly or through**
- 6           **arrangements with the establishment.**
- 7           **(5) Fee schedules outlining the cost of additional 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           **(c) The disclosure form must be provided to a prospective**  
 17           **resident or prospective resident's legal guardian and must be made**  
 18           **readily available to a resident or a resident's legal guardian.**

19           **Sec. 16. A person who knowingly or intentionally fails to**  
 20           **comply with any of the registration requirements of this chapter**  
 21           **commits a Class A infraction.**

22           **Sec. 17. (a) Except as provided in subsection (b), the director**  
 23           **may adopt rules under IC 4-22-2 to assess fees of housing with**  
 24           **services establishments on a per living unit basis to cover costs**  
 25           **associated with the registration and enforcement provisions of this**  
 26           **chapter.**

27           **(b) The director may take into consideration other fees paid to**  
 28           **the state for licensing of housing with services establishments in**  
 29           **determining fees assessed under this chapter.**

30           **Sec. 18. This chapter does not preclude the authority of the**  
 31           **state department of health to regulate:**

- 32           **(1) a home health agency, as provided in IC 16-27 and rules**
- 33           **adopted under IC 16-27; or**
- 34           **(2) a health facility, as provided in IC 16-28 and rules**
- 35           **adopted under IC 16-28.**

36           **Sec. 19. The director shall adopt rules under IC 4-22-2**  
 37           **necessary to carry out this chapter.**

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

1       **the division of disabilities, aging, and rehabilitative services shall**  
2       **develop the standardized disclosure form specified under**  
3       **IC 12-10-15-15, as added by this act, and the process and**  
4       **procedures specified in IC 12-10-15-11, as added by this act, before**  
5       **January 1, 1999.**

6           (b) A housing with services establishment (as defined by  
7       **IC 12-10-15-3, as added by this act) is not required to be registered**  
8       **under IC 12-10-15, as added by this act, before July 1, 1999.**

9           (c) **This SECTION expires July 1, 1999.**  
          (Reference is to SB 436 as introduced.)

**and when so amended that said Bill do pass.**

Committee Vote: Yeas 7, Nays 0.

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**Senator Johnson, Chairperson**