
ENGROSSED

SENATE BILL No. 436

DIGEST OF SB 436 (Updated February 17, 1998 4:00 pm - DI 96)

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

Synopsis: Requires a housing with services establishment to file a disclosure document with the director of the division of disabilities, aging and rehabilitative services within sixty days of the first contract with a resident or the move in of the first resident. Provides that if a housing with services establishment fails to file a disclosure document, the operator may not enter into or extend the term of a contract with an individual to reside in a housing with services establishment to use the term "assisted living" to describe the establishment's services and operations. Requires a housing with services establishment contract to contain certain information. Requires the division of disabilities, aging and rehabilitative services to create a mediation process to assist in resolving contract disputes between residents and housing with services establishments, and to adopt procedures for securing and recording complaints and endorsements filed by residents, residents' designated representatives, and residents' family members.

Effective: July 1, 1998.

Server, Riegsecker, Randolph

(HOUSE SPONSORS — KLINKER, BECKER)

January 13, 1998, read first time and referred to Committee on Planning and Public Services.

January 29, 1998, amended, reported favorably — Do Pass.

February 2, 1998, read second time, amended, ordered engrossed.

February 3, 1998, engrossed. Read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Aged and Aging.

February 17, 1998, amended, reported — Do Pass.

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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.

SENATE ENROLLED ACT No. 436

AN ACT to amend the Indiana Code concerning human services.

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

SECTION 1. IC 12-7-2-64 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 64. "Director" refers to the following:

- (1) With respect to a particular division, the director of the division.
- (2) With respect to a particular state institution, the director who has administrative control of and responsibility for the state institution.
- (3) For purposes of IC 12-10-15, the term refers to the director of the division of disabilities, aging, and rehabilitative services.**
- ~~(3)~~ **(4)** For purposes of IC 12-25, the term refers to the director of the division of mental health.
- ~~(4)~~ **(5)** For purposes of IC 12-26, the term:
 - (A) refers to the director who has administrative control of and responsibility for the appropriate state institution; and
 - (B) includes the director's designee.
- ~~(5)~~ **(6)** If subdivisions (1) through ~~(4)~~ **(5)** do not apply, the term refers to the director of any of the divisions.

SECTION 2. IC 12-7-2-103.5 IS ADDED TO THE INDIANA

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

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

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

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

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

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

(=) (3) For purposes of IC 12-20-8, the meaning set forth in IC 12-20-8-1.

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

SECTION 6. IC 12-7-2-189.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 189.3. "Supportive services", for purposes of IC 12-10-15, has the meaning set forth in IC 12-10-15-6.**

SECTION 7. IC 12-10-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

Chapter 15. Filing Disclosure Documents for Housing with Services Establishments

Sec. 1. This chapter applies to a person who enters into a contract or extends the term of an existing contract with an individual to reside in a housing with services establishment.

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



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

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

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

(b) The term does not include the following:

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

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

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

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

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

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

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

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

Sec. 6. As used in this chapter, "supportive services" means help with personal laundry, handling or assisting with personal funds of the residents, or arranging for medical services, health related services, or social services. The term does not include making referrals, assisting a resident in contacting a service provider of the resident's choice, or contacting a service provider in an emergency.

Sec. 7. (a) An operator shall file a disclosure document for each housing with services establishment with the director. If an operator fails to file a disclosure document, the operator may not:

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

(2) use the term "assisted living" to describe the housing with services establishment's services and operations to the public.



(b) The operator's disclosure document must be filed with the director on forms prescribed by the director and must be verified by the operator. The disclosure document must contain the following information:

- (1) An initial disclosure statement, as described in section 11 of this chapter.
- (2) The contract to be executed between the housing with services establishment and the resident.
- (3) Any other information required by the director under this chapter.

(c) An operator of a housing with services establishment that has filed a disclosure document as provided in this section shall notify the director within thirty (30) days after a change in the:

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

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

(d) An operator of a new housing with services establishment must file a disclosure document within sixty (60) days of the first occurrence of the following:

- (1) The first contract with a resident is signed.
- (2) The first resident moves into the housing with services establishment.

(e) Upon receipt of a disclosure document, the director shall mark the disclosure document to indicate that the document has been filed.

Sec. 8. An operator shall provide the following information concerning the operator's housing for services establishment to the director with the operator's disclosure document:

- (1) The business name, street address, and mailing address of the establishment.
- (2) The name and mailing address of the owner or owners of the establishment. If the owner or owners are not natural persons, the operator must provide identification of the type of business entity of the owner or owners, and the name and addresses of the officers and members of the governing body, or comparable persons for other types of business entities of the owner or owners.
- (3) The name and mailing address of the managing agent, whether through management agreement or lease arrangement, of the establishment, if different from the owner or owners, and the name of the on-site manager, if any.



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(4) The name and address of at least one (1) individual who is responsible for dealing with the director on all matters subject to this chapter.

Sec. 9. (a) Each resident or the resident's representative must be given a complete copy of the contract between the establishment and the resident or the resident's representative 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) A statement describing the disclosure document and licensure status, if any, of the housing with services establishment and any person providing health related services or supportive services under arrangement with the operator.

(5) The term of the contract.

(6) 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.

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

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

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

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

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

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

(13) The criteria used by the housing with services

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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.

(14) 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 provided under subdivision (13).

(15) 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;

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

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

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

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

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

Sec. 10. Unless extended by the written consent of the director, each year after the initial year in which an operator has filed a



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disclosure document under section 7 of this chapter, the operator shall file with the director within four (4) months after the end of the operator's fiscal year an annual disclosure document.

Sec. 11. (a) An operator shall amend its initial disclosure document filed with the director under sections 7 and 8 of this chapter at any time if necessary to prevent the initial or annual disclosure document from containing any material misstatement of fact or omission of a material fact.

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

Sec. 12. (a) The director shall develop a standardized disclosure document to be filed by the housing with services establishment.

(b) The standardized disclosure document must include the following:

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

(2) 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.

(3) 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.

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

(5) Fee schedules outlining the cost of additional services.

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

(7) A description of the establishment's complaint resolution process available to the residents and the establishment's referral procedures if the contract is terminated.

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

(c) The disclosure document must be:

(1) provided to a prospective resident or prospective resident's legal guardian; and

(2) made readily available to a resident or a resident's legal

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guardian.

Sec. 13. This chapter does not preclude the authority of the state department of health to regulate:

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

Sec. 14. The director shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) The director of the division of disabilities, aging, and rehabilitative services shall develop the standardized disclosure document specified under IC 12-10-15-12, as added by this act, before September 1, 1998.

(b) A housing with services establishment (as defined by IC 12-10-15-3, as added by this act) is required to file a disclosure document under IC 12-10-15, as added by this act, within sixty (60) days of the publication of the standardized disclosure form by the director of the division of disabilities, aging, and rehabilitative services.

(c) This SECTION expires January 1, 1999.

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) The health finance commission under IC 2-5-23 shall:

- (1) review the process of resolving disputes between residents and housing with services establishments under IC 12-10-15, as added by this act; and
- (2) make recommendations regarding a mediation process not later than January 1, 1999.

(b) This SECTION expires January 1, 1999.

SECTION 10. An emergency is declared for this act.

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