

Proposed Rule
LSA Document #06-428

DIGEST

Amends [410 IAC 16.2-5-0.5](#) to allow a resident receiving residential care services in a health facility to remain in the health facility in some circumstances when the care services needed by the resident exceeds residential care services. Amends [410 IAC 16.2-5-4](#) to clarify the standard of care required of a health facility providing residential care services and to determine who may assist in the preparation of medication dispensers/organizers in health facilities that provide residential care services for those residents who self-medicate. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[410 IAC 16.2-5-0.5](#); [410 IAC 16.2-5-4](#)

SECTION 1. [410 IAC 16.2-5-0.5](#) IS AMENDED TO READ AS FOLLOWS:

[410 IAC 16.2-5-0.5](#) Scope of residential care facilities

Authority: [IC 16-28-1-7](#); [IC 16-28-1-12](#)

Affected: [IC 16-28-2](#); [IC 16-28-5-1](#)

Sec. 0.5. (a) A health facility that provides residential nursing care or administers medications prescribed by a physician must be licensed as a residential care facility. A health facility licensed as a comprehensive care facility is not required to also be licensed as a residential care facility in order to provide residential nursing care.

(b) A residential care facility may not provide comprehensive nursing care except to the extent allowed under this rule.

(c) A facility that provides services, such as:

- (1) room;
- (2) meals;
- (3) laundry;
- (4) activities;
- (5) housekeeping; and
- (6) limited assistance in activities of daily living;

without providing administration of medication or residential nursing care is not required to be licensed. The provision by a licensed home health agency of medication administration or residential nursing care in a facility ~~which~~ **that** provides room, meals, a laundry, activities, housekeeping, and limited assistance in activities of daily living does not require the facility to be licensed, regardless of whether the facility and the home health agency have common ownership, provided, however, that the resident is given the opportunity to contract with other home health agencies at any time during the resident's stay at the facility.

(d) Notwithstanding subsection ~~(f)~~, **(g)**, a resident is not required to be discharged if receiving hospice services through an appropriately licensed provider of the resident's choice.

(e) Notwithstanding subsection ~~(f)(2)~~, ~~(f)(3)~~, ~~(f)(4)~~, **(g)(2)**, **(g)(3)**, **(g)(4)**, and ~~(f)(5)~~, **(g)(5)**, a residential care facility that retains appropriate professional staff may provide comprehensive nursing care to residents needing care for a self-limiting condition.

(f) Notwithstanding subsection (g), a resident who is receiving residential care in a health facility is not required to be discharged to a comprehensive care facility if the:

- (1) resident, the resident's physician, and the residential care facility agree in writing to the resident's continued stay in the residential care facility;**
- (2) residential care facility agrees in writing to provide the necessary comprehensive care to the**

resident; and

(3) health facility provides comprehensive and residential care.

~~(f)~~ **(g)** The resident must be discharged if the resident:

- (1) is a danger to the resident or others;
- (2) requires twenty-four (24) hour per day comprehensive nursing care or comprehensive nursing oversight;
- (3) requires less than twenty-four (24) hour per day comprehensive nursing care, comprehensive nursing oversight, or rehabilitative therapies and has not entered into a contract with an appropriately licensed provider of the resident's choice to provide those services;
- (4) is not medically stable; or
- (5) meets at least two (2) of the following three (3) criteria unless the resident is medically stable and the health facility can meet the resident's needs:
 - (A) Requires total assistance with eating.
 - (B) Requires total assistance with toileting.
 - (C) Requires total assistance with transferring.

~~(g)~~ **(h)** For purposes of [IC 16-28-5-1](#), a breach of:

- (1) subsection (a) or (b) is an offense; and
- (2) subsection (c), (d), (e), or ~~(f)~~ **(g)** is a deficiency.

(Indiana State Department of Health; [410 IAC 16.2-5-0.5](#); filed Jan 21, 2003, 8:34 a.m.: 26 IR 1911, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: [20070613-IR-410070141RFA](#))

SECTION 2. [410 IAC 16.2-5-4](#) IS AMENDED TO READ AS FOLLOWS:

[410 IAC 16.2-5-4](#) Health services

Authority: [IC 16-28-1-7](#); [IC 16-28-1-12](#)

Affected: [IC 16-28-5-1](#)

Sec. 4. (a) Each resident shall have a primary care physician selected by the resident.

(b) Each resident may have a dentist selected by the resident.

(c) Each facility shall choose whether or not it administers medication or provides residential nursing care, or both. These policies shall be:

- (1)** delineated in the facility policy manual; and
- (2)** clearly stated in the admission agreement.

(d) Personal care, and assistance with activities of daily living, shall be provided based upon individual needs and preferences.

(e) Each resident covered by section 0.5(g) of this rule must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being.

~~(e)~~ **(f)** The administration of medications and the provision of residential nursing care shall be as ordered by the resident's physician and shall be supervised by a licensed nurse on the premises or on call as follows:

- (1) Medication shall be administered by licensed nursing personnel or qualified medication aides.
- (2) The resident shall be observed for effects of medications. Documentation of any undesirable effects shall be contained in the clinical record. The physician shall be notified immediately if undesirable effects occur, and such notification shall be documented in the clinical record.
- (3) The individual administering the medication shall document the administration in the individual's medication and treatment records that indicate the:
 - (A) time;
 - (B) name of medication or treatment;
 - (C) dosage (if applicable); and

(D) name or initials of the person administering the drug or treatment.

(4) Preparation of doses for more than one (1) scheduled administration is not permitted, **unless licensed nursing personnel of the facility are preparing medication dispenser/organizers for residents who self-medicate.**

(5) Injectable medications shall be given only by licensed personnel.

(6) PRN medications may be administered by a qualified medication aide (QMA) only upon authorization by a licensed nurse or physician. The QMA must receive appropriate authorization for each administration of a PRN medication. All contacts with a nurse or physician not on the premises for authorization to administer PRNs shall be documented in the nursing notes indicating the time and date of the contact.

(7) Any error in medication administration shall be noted in the resident's record. The physician shall be notified of any error in medication administration when there are any actual or potential detrimental effects to the resident.

(f) **(g)** The facility shall have available on the premises or on call the services of a licensed nurse at all times.

(g) **(h)** For purposes of [IC 16-28-5-1](#), a breach of:

(1) subsection (e)(1), (e)(2), **(e)**, **(f)(1)**, **(f)(2)**, or (e)(5) **(f)(5)** is an offense;

(2) subsection (a), (d), (e)(3), (e)(6), (e)(7), **(f)(3)**, **(f)(6)**, **(f)(7)**, or (f) **(g)** is a deficiency;

(3) subsection (e)(4) **(f)(4)** is a noncompliance; and

(4) subsection (c) is a nonconformance.

(Indiana State Department of Health; [410 IAC 16.2-5-4](#); filed May 2, 1984, 2:50 p.m.: 7 IR 1497; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1576, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1929, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4006; readopted filed May 22, 2007, 1:44 p.m.: [20070613-IR-410070141RFA](#))

[Notice of Public Hearing](#)

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