TITLE 460 DIVISION OF DISABILITY AND REHABILITATIVE SERVICES

NOTE: Under P.L.141-2006, SECTION 31, the name of the Division of Disability, Aging, and Rehabilitative Services is changed to the Division of Disability and Rehabilitative Services, effective July 1, 2006.
NOTE: Under P.L.4-1993, SECTION 31 and P.L.5-1993, SECTION 44, the name of the Division of Aging and Rehabilitative Services is changed to Division of Disability, Aging, and Rehabilitative Services, effective July 1, 1993.
NOTE: Under IC 4-28-2-1, the name of the Department of Human Services is changed to Division of Aging and Rehabilitative Services, effective January 1, 1992.

ARTICLE 1. AGING

Rule 1. Nursing Home Prescreening

460 IAC 1-1-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12-33; IC 12-10-12-34; IC 12-15

Sec. 1. The purpose of the health facility preadmission screening program is to determine whether there are community services available for individuals who need assistance with the tasks of daily living that would be more appropriate than care in a health facility and, if so, to deny permission to enter a health facility unless the individual is willing to forego eligibility for certain Medicaid reimbursement for a period of time beginning from the date of admission as specified in IC 12-10-12-33 and IC 12-10-12-34. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-1; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1984; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3383; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1270; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-1) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-1) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-8-6-1; IC 12-10-1-1; IC 12-10-1-4; IC 12-10-12; IC 12-14; IC 12-15-2; IC 16-28-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Applicant" means an individual who has directly, or through a responsible party, made application to participate in the nursing home prescreening program under IC 12-10-12 in order to determine the appropriateness of the individual's placement in a health facility.

(c) "Admission to a health facility" means as soon as an individual is physically present in a health facility unless the admittance is designee-approved. A person approved by a designee is considered admitted twenty-four (24) hours after entering the facility.

(d) "Bureau" refers to the bureau of aging and in-home services established within the division under IC 12-10-1-1.

(e) "DDARS" or "division" refers to the Indiana division of disability, aging, and rehabilitative services.

(f) "Designee" means an individual appointed by the prescreening agency, who may authorize temporary admittance to a health facility, under IC 12-10-12-28 through IC 12-10-12-31.

(g) "Equivalent degree" means a bachelor's degree or a master's degree, which meets the following requirements:

(1) The degree is in the same field of study as those listed in section 10(c)(1) of this rule.

(2) The degree requires courses comparable to the courses required for the degrees listed in section 10(c)(1) of this rule.

(3) The degree has a different title than the degree listed in section 10(c)(1) of this rule.

(h) "Health facility" means a facility licensed by the state department of health under IC 16-28-2, whether Medicare or Medicaid certified or not, that:

(1) provides comprehensive:

(A) nursing care;
(B) room;
(C) food;
(D) laundry;
(E) administration of medications;
(F) special diets; and

(G) treatments; and

(2) may provide rehabilitative and restorative therapies under the order of an attending physician.

The term, for purposes of this rule, does not include intermediate care facilities for the mentally retarded (ICF/MR) or facilities licensed for residential care.

(i) "Level I: Identification Evaluation Screen" refers to a screening tool designed to ascertain whether an individual has or is suspected of having a condition of mental illness (MI) and/or mental retardation /developmental disability (MR/DD).

(j) "Medicaid or medical assistance" means payment for part or all of the cost of medical or remedial services furnished on behalf of eligible needy individuals as defined in IC 12-15-2.

(k) "Medicaid waiver" refers to specific provisions concerning home and community based services as specified under 42 U.S.C. 1396n, which have been approved by the Secretary of the federal Department of Health and Human Services, for implementation in Indiana.

(l) "Office" means the office of Medicaid policy and planning established under IC 12-8-6-1.

(m) "PAS process" means the process specified in section 4 of this rule.

(n) "PAS team" means the screening team under IC 12-10-12-14.

(o) "Preadmission screening", "prescreening", and "screening program" mean the screening process under IC 12-10-12.

(p) "Prescreening agency" or "PAS agency" means an area agency on aging designated by the bureau under IC 12-10-1-4(18).

(q) "Responsible party" means an individual chosen by an applicant or, if the applicant is a minor or has been adjudicated incompetent, a parent or guardian of an applicant who assists in the process of making application for prescreening under this rule. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-2; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1984; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3386; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1270; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-2) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-2) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-3 Exemption

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 3. The prescreening program under IC 12-10-12 applies to all persons applying for admission to a health facility, except that all persons admitted to a health facility prior to implementation of this section on April 30, 1983, are exempted from the prescreening requirement as set out in IC 12-10-12. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-3; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1985; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3387; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1271; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-3) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-3) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-4 PAS process

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 4. (a) The PAS process shall be completed for each individual who has agreed to participate in the PAS program.

(b) The PAS process shall consist of the following:

(1) A complete PAS assessment, including the following:

(A) The applicant's medical condition and related service needs.

(B) The applicant's psychosocial status and related service needs.

(C) The applicant's degree of functional impairment and related service needs.

(D) The availability of community services (formal and informal) that are sufficient and appropriate to meet the identified service needs outside of, as opposed to within, a health facility.

(2) A screening team recommendation, based upon the complete assessment, as to the appropriateness of health facility placement.

(3) A final determination by the office, based upon the screening team recommendation, as to the appropriateness of health facility placement.

(c) The PAS process must be completed prior to admission to a health facility, within twenty-five (25) days from the effective date of the PAS application, except in situations involving designee authorization for temporary admission to a health facility. However, for a nonresident, the PAS process must be completed and the findings reported within ten (10) days. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-4; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1985; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3387; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1271; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-4) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-4) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-5 Application

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12-7; IC 12-10-12-27.1; IC 16-28-2

Sec. 5. (a) The individual requesting care in a health facility or the individual's responsible party shall fill out and sign an application for the prescreening program prior to admission to a health facility under IC 12-10-12-7. The application is considered to be completed when it is filled out, signed, and given to a representative of a health facility, the designee, or a member of the prescreening team.

(b) The applicant shall, as part of the application process, state the name, address, and telephone number of the physician that he or she requests to serve on the screening team.

(c) The effective date of the application for prescreening is the date on which the prescribed form is signed by the applicant.

(d) A person in a residential living arrangement who is at risk of institutionalization or who could benefit from home-based care may make a request to the PAS agency in the county in which the applicant resides under IC 12-10-12 prior to application for admission to a health facility to determine if home-based services are available and appropriate. The application will be made to the prescreening agency serving the area in which the applicant resides.

(e) An individual who is a resident of a health facility may request to be screened, as part of a discharge planning process, to determine what services are available to help the individual live outside of the health facility. The application will be made to the prescreening agency serving the area in which the health facility is located.

(f) Requirements for a person residing in another state requesting admission to a health facility in Indiana shall be as follows:

(1) The person must participate in the prescreening program under IC 12-10-12-27.1.

(2) An application for the prescreening program by a person residing in another state shall be made to the prescreening agency serving the county in which the health facility is located, and the availability of community services shall be based on services available in the area in which the health facility is located. Determination is to be rendered within ten (10) days of receipt of the required documents.

(g) The screening under IC 12-10-12 shall not be required:

(1) for a person admitted to a health facility following direct discharge from another health facility licensed under IC 16-28-2;

(2) for a person readmitted to a health facility from a hospital after discharge directly from a health facility to the hospital, if his or her placement in a health facility was found to be appropriate under IC 12-10-12 or if he or she was admitted to a health facility prior to April 30, 1983;

(3) for transfer from one (1) nursing facility level of services to another nursing facility level of services in the same health facility or in another health facility;

(4) for a person admitted to an intermediate care facility for the mentally retarded or a facility licensed for residential care; or

(5) for an individual who transfers from a continuing care retirement community bed to the bed of a comprehensive care facility licensed under IC 16-28-2 that serves only residents of that retirement community for a recuperative stay not to exceed five (5) days, but if the individual remains longer than five (5) days, the individual must apply for screening no later than the fifth day.

(h) Authorization for admission under IC 12-10-12-31 may be granted by the designee when a medical emergency exists in that care in the health facility is required within seventy-two (72) hours of the request for admission and the attending physician certifies the need for emergency admission to the prescreening agency following the procedures established by the division. An emergency admission shall only be granted for admission from a noninstitutional living arrangement or an emergency room of an in-state hospital.

(i) For individuals who have undergone the screening process and have been determined to be ineligible for placement in a health facility, that individual shall not apply for participation in further screening for a minimum of one (1) year unless the medical

condition or the support system of the individual is significantly changed to the degree that the attending physician believes a new screening process is medically necessary. The attending physician may certify the need for such additional screening to the prescreening agency. The screening team will make the final decision on the need for another screening based on the attending physician's certification. The screening shall be conducted in accordance with IC 12-10-12. The effective date of the application for additional screening shall be the date of the screening team's final decision on the need for another screening.

(j) For persons not admitted to a health facility, the determination under IC 12-10-12-20 that placement in a health facility is appropriate shall be valid for a period not to exceed ninety (90) days from the date of issuance by the office. If the person has not been admitted to a health facility ninety (90) days after the issuance of the determination, the individual must apply for PAS screening again, and must have a physician's certification of the need for additional screening.

(k) An individual who was not notified of the requirement for prescreening and who is in a health facility may be prescreened after receiving notification of the requirement. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-5; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1985; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3388; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1272; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-5) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-5) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-6 Agency cooperation

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 6. (a) The county offices of family and children, the Indiana division of mental health, the bureau of developmental disabilities, the office, the division, the prescreening agencies, and all health facilities shall cooperate in the operation of the screening program and shall share such information concerning the applicant as requested by each other, except to the extent that the information is otherwise protected under state or federal law.

(b) The division shall prescribe the forms and procedures and establish the policy to be followed in the implementation of the nursing home prescreening program. The appointed area agencies on aging shall be designated by the division as the prescreening agencies to carry out the duties as outlined in this rule. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-6; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1987; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3389; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1273; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-6) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-6) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-7 Prescreening agency; duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 7. The prescreening agency shall do the following:

(1) Seek cooperation from other public and private agencies in the community which offer services to the disabled and elderly.

(2) Provide information and education to the general public regarding availability of the screening program.

(3) Accept prescreening referrals from individuals, families, human service professionals, and health facility personnel.

(4) Assess health and social needs of referred individuals and identification of services needed to maintain these persons in the least restrictive environment.

(5) Identify available noninstitutional services to meet the care needs of individuals referred.

(6) Compute the cost effectiveness of noninstitutional versus health facility services.

(7) Upon receipt of a completed application, immediately schedule the prescreening activities to be completed within the time designated at IC 12-10-12-28 through IC 12-10-12-31 or within twenty-five (25) days for persons making application under IC 12-10-12-7.

(8) Determine the composition of the PAS teams provided for under IC 12-10-12-14. The division may require the PAS agency to seek approval of PAS team members from the division.

(9) Make appointments and fill vacancies on the PAS team and appoint designees under IC 12-10-12-27.

(10) Appoint to the PAS team at the time of each prescreening, the applicant's physician as required in IC 12-1-12-14(b) *[IC*

12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.]. In the event that the applicant is unable to specify an attending physician, the prescreening agency may assist to locate a physician who shall be named as a member of the screening team with the approval of the applicant.

(11) Notify each appointee of his or her selection, in writing.

(12) Retain a signed copy of the prescribed notification, application form, and supporting documentation for a period of three (3) years.

(13) Prepare reports as required by the division.

(14) Report to the prosecuting attorney of the county in which the violation occurred the failure of the health facility to notify the individual that he or she must be prescreened prior to admission to the health facility or the failure of the health facility to deliver the signed copy of the notification to the prescreening agency serving the county in which the applicant resides.

(Division of Disability and Rehabilitative Services; 460 IAC 1-1-7; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1987; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3389; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1273; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-7) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-7) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-8 Health facility; duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 8. (a) When an individual applies to a health facility for admission, the health facility shall notify the applicant:

(1) that he or she must apply to the prescreening agency for participation in the prescreening program;

(2) that the preadmission screening program consists of an assessment of the applicant's need for care in a health facility made by a team of individuals familiar with the needs of persons seeking admission; and

(3) the penalty that the individual will incur under IC 12-10-12-33 and IC 12-10-12-34 if he or she does not comply with the prescreening program.

(b) The notification shall be in writing on forms prescribed by the division and shall contain the information set out in IC 12-10-12-10(a) and IC 12-10-12-10(b).

(c) The applicant must be given one (1) signed copy acknowledging that he or she has received the notice and the date that the notice was received. The health facility that the individual has entered shall keep one (1) signed copy on file for one (1) year from the date of signature or, if the individual is admitted to the health facility, from the date of admission, whichever is later. One (1) signed copy must be forwarded to the prescreening agency within five (5) working days from the date of signature or, if the individual is admitted to the health facility, from the date of admission, whichever is later.

(d) It is the responsibility of the health facility to provide verification that:

(1) the application for prescreening was made prior to admission;

(2) an individual admitted prior to the prescreening determination under IC 12-10-12-20 had designee authorization for admission required under IC 12-10-12-27; and

(3) the copy of the application and other designated documentation were forwarded to the prescreening agency within five (5) working days from the date of designee authorization.

(e) The health facility shall promptly provide to the screening team an estimate of the cost of all services that the individual is anticipated to require in the health facility. The estimate will be at the cost charged to private payors. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-8; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1988; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3390; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1274; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-8) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-8) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-9 Applicant's physician or physician member of PAS team; duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 9. The applicant's physician or physician member of the screening team shall promptly supply all medical information on the applicant that is necessary to complete the assessment and make the findings required by IC 12-10-12-17 and IC 12-10-12-28

through IC 12-10-12-31. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-9; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1988; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3391; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1274; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-9) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-9) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-10 PAS team; duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12-16; IC 12-10-12-18; IC 12-13-5; IC 12-14

Sec. 10. (a) The PAS team shall conduct the preadmission assessment pursuant to the policies and procedures prescribed by the division.

(b) The preadmission assessment shall be conducted by the use of the assessment forms developed or approved by the division and shall include the following elements:

(1) Client demographic information.
(2) Present medical condition of client.
(3) Present psychosocial status of client.
(4) Assessment of functional capacity of client.
(5) Present formal or informal services being provided to the client.
(6) Present unmet needs of client.
(7) Formal and informal services that are presently available but are not being provided to the client.
(8) Observations of the PAS team during the on-site visit.
(9) Persons consulted during the screening process.
(10) Client's preference for care.
(11) A preliminary care plan.

(c) Each PAS team member, other than the physician member, shall have one (1) of the following:

(1) A bachelor's degree in social work, psychology, gerontology, sociology, counseling, nursing, or an equivalent degree.
(2) A license as a registered nurse or a bachelor's degree in any field and a minimum of two (2) years of direct service experience with the elderly or persons with disabilities, which includes activities such as the following:
    (A) Assessment.
    (B) Plan development.
    (C) Implementation.
    (D) Monitoring.

A master's degree in a related field may substitute for the required experience.

(d) An individual who meet the educational requirement and a minimum of one (1) year of the required experience may qualify provisionally as a PAS team member. In order for any individual to qualify provisionally as a PAS team member, the PAS agency shall have in place a written plan, approved by the division, outlining the manner in which the individual shall achieve the experience needed to become a PAS team member. The written plan shall include the following:

(1) A specific proposal of how the remaining amount of the deficient experience will be satisfied within a time period equal to the amount of remaining experience needed, but not to exceed twelve (12) months.
(2) Arrangements for the provisional PAS team member to meet, at least biweekly, with a supervisor or an individual who meets the qualifications in section 10(c) of this rule, to discuss the provisional PAS team member's care plans.
(3) A statement asserting that the provisional PAS team member's care plans will be reviewed and approved by the supervisor or an individual who meets the qualifications in section 10(c) of this rule.

Provisional PAS team member certification shall be withdrawn by the division if the terms of the written plan are not met at least twelve (12) months from the date of provisional certification.

(e) Designees shall meet the criteria in subsection (c).

(f) After the assessment is completed, the PAS team shall find whether the placement of the individual in a health facility is appropriate, utilizing the guidelines set forth in section 12(c) and 12(d) of this rule.

(g) The vote of the PAS team shall be conducted at the time and place as set by the member of the screening team who represents the prescreening agency. The vote may either be made by a signature at the time of individual contact, based on a review of all necessary data, or the vote may be conducted by telephone. The vote of the physician team member will be made by completion

of and signature on the prescribed form. The assessment of the appointee of the prescreening agency, together with the assessments of any other team member who desires to comment, shall be submitted to the office for the prescreening determination designated under IC 12-10-12-18. All screening forms, narrative reports, and other pertinent applicant data shall be submitted to the office with the findings of the PAS team.

(h) If the PAS team finds that placement in a health facility should be denied, then it shall:

(1) list the reason(s) for denial;

(2) list the community services available to the applicant that would be more appropriate than care in a health facility;

(3) detail the cost of those community services, regardless of the source of payment;

(4) detail the cost of placement in a health facility (which shall include the cost of all services, including those costs in addition to per diem that the applicant will require), regardless of the source of payment;

(5) discuss the alternative service plan with the applicant after completion of the assessment;

(6) submit the findings in writing to the office; and

(7) make appropriate referral for case management services if the services are available.

(i) The member of the PAS team who is appointed as the representative of the prescreening agency shall obtain the information for, and prepare the assessment required by IC 12-10-12-16. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-10; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1988; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3391; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1274; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-10) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-10) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-11 Designee; duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 11. (a) It is the duty of the designee to gather sufficient information to make a decision whether an applicant qualifies for temporary admittance to a health facility under IC 12-10-12-28 through IC 12-10-12-31.

(b) The designee shall submit a decision in writing and supporting documentation regarding the allowance or disallowance of placement in a health facility under IC 12-10-12-28 through IC 12-10-12-31 to the following:

(1) The prescreening agency.

(2) The applicant.

(3) The relevant health facility.

(Division of Disability and Rehabilitative Services; 460 IAC 1-1-11; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1989; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3392; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1275; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-11) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-11) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-12 Office of Medicaid policy and planning; duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12-20; IC 12-13-5; IC 12-14

Sec. 12. (a) The final preadmission screening determination under IC 12-10-12-20(b) shall be rendered by the office within three (3) working days of receipt of the prescreening documentation and recommendation.

(b) The office shall notify:

(1) the applicant;

(2) the prescreening agency; and

(3) the health facility;

in writing of the prescreening determination, including data on alternative community services as identified in the recommendation of the prescreening team.

(c) A final determination that the person is appropriate for nursing facility care shall be rendered when the person's condition meets the nursing facility level of services as set forth in 405 IAC 1-3-1 through 405 IAC 1-3-3 and:

(1) alternative community services are not sufficient to meet the needs of the person;

(2) appropriate and beneficial alternative community services that have been identified are not immediately accessible by the person due to the lack of services in the county or a waiting list for needed services in the county; or

(3) appropriate and beneficial alternative community services that have been identified are immediately accessible, regardless of whether the cost of such services is greater than the cost of nursing home care.

(d) When the criteria in subsection (c) are not met, a final determination that the person is inappropriate for nursing facility care shall be rendered.

(e) The office shall retain a record of each determination that is a disapproval of admission or a waiver of a requirement in this rule for at least three (3) years. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-12; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1989; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3392; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1276; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-12) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-12) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-13 Individual compliance with PAS program

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12-33; IC 12-10-12-34; IC 12-13-5; IC 12-14

Sec. 13. (a) It is the responsibility of each prescreening agency to monitor individual compliance with the PAS program and report to the office. It is the responsibility of the office to impose the PAS penalty under IC 12-10-12-33 and IC 12-10-12-34 if there is noncompliance.

(b) Whenever an individual requests Medicaid payment of per diem for care in a health facility, the office must verify that individual's PAS status. *(Division of Disability and Rehabilitative Services; 460 IAC 1-1-13; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3393; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1276; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-13) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-13) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-14 Penalties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 14. (a) A person admitted to a health facility will not incur the penalties set out in IC 12-10-12-33 and IC 12-10-12-34 if authorization for admission from the prescreening agency under IC 12-10-12-28 through IC 12-10-12-31 or approval for admission under IC 12-10-12-20 has been rendered.

(b) A person admitted to a health facility on designee authorization under IC 12-10-12-28 through IC 12-10-12-31 will not incur the penalties set out in IC 12-10-12-33 and IC 12-10-12-34 if, regardless of when the determination is made:

(1) placement in the health facility is determined to be appropriate under IC 12-10-12-20; or

(2) the individual is discharged from the health facility within fourteen (14) days after receipt of the decision that placement in the health facility is determined to be inappropriate.

(c) The penalty under IC 12-10-12-34 shall continue only until the person receives a determination that placement in a health facility certified as a skilled nursing facility is appropriate, but in no case will last more than one (1) year from the date of admission. The time of the penalty will be computed to include the period authorized under IC 12-10-12-28 through IC 12-10-12-31 except that the penalty will not be imposed for the designee authorized time.

(d) A person who refuses to be screened by the PAS team shall incur the penalty set out in IC 12-10-12-33 or IC 12-10-12-34.

(e) However, a person who was not notified of the preadmission screening requirement will incur no penalty, unless the individual refuses to be screened after notification or is found to be inappropriate for services, in which case the individual would incur the penalty beginning with the date of notification that preadmission screening is required.

(f) The penalty set out in IC 12-10-12-33 and IC 12-10-12-34 shall not be levied against an individual who:

(1) is eligible for and requires home and community based services approved by the Secretary of the federal Department of Health and Human Services under 42 U.S.C. 1396n; and

(2) chooses to go into a health facility.

(Division of Disability and Rehabilitative Services; 460 IAC 1-1-14; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; errata, 8 IR 2041; filed

Aug 7, 1995, 10:00 a.m.: 18 IR 3393; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1276; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-14) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-14) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-15 Waiver of sanctions

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12-23; IC 12-13-5; IC 12-14

Sec. 15. (a) Application for a waiver under IC 12-10-12-23 of the prescreening sanction may be made to the office. The waiver may be granted if, after investigation, it is found that the conditions under IC 12-10-12-23 were met and if the health facility and hospital when necessary cooperated in the prescreening process promptly. The office shall confer with the prescreening agency to ascertain whether the conditions established in this subsection and IC 12-10-12-23 were met. The office shall maintain written documentation on the waiver decision for a period of not less than three (3) years.

(b) The office shall provide a copy of the findings under IC 12-10-12-23 to the following:

(1) The division.

(2) The prescreening agency.

(3) The applicant.

(Division of Disability and Rehabilitative Services; 460 IAC 1-1-15; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3394; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1277; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-15) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-15) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-16 Appeals

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 16. (a) An applicant aggrieved by a final determination of the office or the division may appeal that determination to the family and social services administration, hearings and appeals office.

(b) The request for a fair hearing must be submitted in writing and signed by the applicant. This request must be received in the family and social services administration, hearings and appeals office within thirty (30) days of the action being appealed. This thirty (30) day period is measured from the date of the applicant's receipt of the PAS decision being appealed.

(c) The office shall provide a copy of the appeal decision to the following:

(1) The division.

(2) The prescreening agency.

(3) The applicant.

(Division of Disability and Rehabilitative Services; 460 IAC 1-1-16; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3394; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1277; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-1-16) to the Division of Aging and Rehabilitative Services (460 IAC 1-1-16) by P.L.41-1987, SECTION 23, effective July 1, 1987.

Rule 2. Adult Protective Services

460 IAC 1-2-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 1. The purpose of the adult protective services program is to provide a legal basis for intervention to protect endangered adults within the state of Indiana by receiving reports regarding adults who may be endangered, investigating those reports and providing a coordinated and proper local response to individual cases as they are substantiated. Responsibility for investigating reports of neglect, battery, or exploitation of endangered adults, as well as for securing the appropriate social, medical, and legal intervention, shall rest with adult protective services units, designated by the division of disability, aging, and rehabilitative services.

(Division of Disability and Rehabilitative Services; 460 IAC 1-2-1; filed Oct 30, 1985, 10:48 a.m.: 9 IR 478; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1278; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-1) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-1) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "APS unit" is the adult protective services unit, charged with receiving and investigating reports regarding endangered adults, located throughout the state in areas designated by DDARS.

(c) "Available services" means services needed by the individual to sustain his or her life, liberty, health or property which can be obtained from a service provider serving the area in which the endangered adult is living, or which could be provided by a willing neighbor, friend, or relative.

(d) "DDARS" is the division of disability, aging, and rehabilitative services.

(e) "Emergency" refers to a situation in which the possibility of immediate physical danger to the adult exists.

(f) "Endangered adult" means an individual who is eighteen (18) years of age or older and who:

(1) is incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity, of managing or directing the management of the individual's property or providing self-care; and

(2) is harmed or threatened with harm as a result of:

(A) neglect;

(B) battery; or

(C) exploitation of the individual's personal services or property.

The term includes individuals who are endangered as a consequence of their own inability to care for themselves and who would receive little or no help except through the services of an external intervenor.

(g) "Exploitation of the individual's personal services or property" includes, but is not limited to sexual misuse as well as the use of the endangered adult's labor without pay or exerting unauthorized control over the finances or property of the endangered adult.

(h) "Neglect" means that the endangered adult or the person who takes care of the endangered adult is unable or fails to provide adequate food, clothing, shelter or medical care.

(i) "Substantiated" means that endangerment was established to the satisfaction of the APS unit as relates to the definition of an endangered adult.

(j) "Unsubstantiated" means that endangerment of an individual was not established to the satisfaction of the APS unit, within the meaning of IC 12-10-3. *(Division of Disability and Rehabilitative Services; 460 IAC 1-2-2; filed Oct 30, 1985, 10:48 a.m.: 9 IR 478; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1278; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-2) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-2) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-2-3 Agency cooperation

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 3. All appropriate governmental agencies shall cooperate in the implementation of the provisions of IC 12-10-3 and coordinate services to endangered adults and shall share such information concerning the allegation of battery, neglect, exploitation, or endangerment of adults as requested by each other, except to the extent that the information is otherwise protected under state or federal law. *(Division of Disability and Rehabilitative Services; 460 IAC 1-2-3; filed Oct 30, 1985, 10:48 a.m.: 9 IR 478; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1278; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-3) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-3) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-2-4 Division's duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3-7; IC 12-10-3-10; IC 35-42-2-1; IC 35-46-1-13

Sec. 4. DDARS shall do the following:

(1) Provide information and education to the general public regarding the existence of the adult protective services law and available services.

(2) Prescribe the forms and procedures to be followed in the implementation of the program.

(3) Contract with entities, as identified at IC 12-10-3-7, to perform the duties of adult protective services units.

(4) Provide training and technical assistance in program operation and service delivery to the units.

(5) Monitor the program and fiscal activities of the units.

(6) Receive all reports of known or suspected neglect, battery, or exploitation which are communicated in person, in writing, or by telephone:

(A) establish and operate a statewide toll-free telephone line, answered twenty-four (24) hours a day, seven (7) days a week;

(B) document the receipt of all reports, by obtaining all necessary information as per IC 12-10-3-10;

(C) make a determination and classify the status of each report upon receipt as either emergency or nonemergency;

(D) refer all emergency reports received to the appropriate law enforcement agency immediately, and notify the appropriate APS unit of the referral to the law enforcement agency; and

(E) refer all nonemergency reports received to the appropriate APS unit within five (5) working days.

(7) Report to the general assembly before February 2 of each year concerning, at a minimum:

(A) the division's activities in the preceding year under IC 12-10-3; and

(B) program recommendations for continuing protection of endangered adults.

(Division of Disability and Rehabilitative Services; 460 IAC 1-2-4; filed Oct 30, 1985, 10:48 a.m.: 9 IR 479; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1279; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-4) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-4) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-5 Adult protective services unit's duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 5. The APS unit shall assure that the following activities are carried out:

(1) Secure and maintain a full-time equivalent qualified protective services coordinator, as defined in 460 IAC 1-2-6.

(2) Cooperate with DDARS to provide information and education to the general public within the designated area regarding the existence of the adult protective services law and available services.

(3) Accept all reports of adult battery, neglect and exploitation from individuals, health care and human service professionals, institutions, law enforcement officials, DDARS, and other sources.

(4) Document the receipt of reports on the official report form developed by DDARS, obtaining all available and pertinent information.

(5) Conduct an investigation of all reports of battery, neglect, and exploitation to ascertain the condition and safety of the allegedly endangered adult:

(A) immediately when the possibility of physical danger to the adult exists; or

(B) as soon as possible after receipt of a report (within twenty calendar days).

(6) Follow procedures for coordination with the Indiana state department of health as per IC 12-10-3-17.

(7) Maintain procedures for appropriate access to and for safeguarding of the confidentiality of records.

(8) Be familiar with available community resources.

(9) Seek cooperation from other public and private agencies and individuals in the geographic services region which offer services as may be needed by endangered adults.

(10) Cooperate with all the APS units in Indiana.

(11) Participate in DDARS-sponsored in-service training.

(12) After initial investigation, proper notification that the report is unsubstantiated shall be made to concerned parties, at the discretion of the APS unit.
(13) Report to DDARS on forms provided by DDARS, information concerning each report of battery, neglect, or exploitation received and investigated, within time frames established by DDARS, including those reports made to the state department of health.
(14) Transmit to DDARS all identifying records concerning unsubstantiated reports in accordance with DDARS policy and procedures.
(15) In instances of substantiated reports, obtain an assessment of the endangered adult's situation and needs, and coordinate with the appropriate social services agencies who will develop a service plan for the provision of protective services (in cooperation with the endangered adult).
(16) The plan for the provision of protective services shall be given to the endangered adult in writing, and shall include:
(A) a statement of the problem;
(B) one (1) or more goal statements;
(C) a description of the desired state of client functioning;
(D) identification of the appropriate and least restrictive services;
(E) the frequency and duration of anticipated service delivery; and
(F) the manner in which the effectiveness of the services will be monitored and evaluated.
(17) Approve said plan and assure that the available necessary protective services for the endangered adult are secured.
(18) Monitor and maintain complete documentation of the implementation of the protective services plan.
(19) Petition, through the prosecuting attorney's office, the court having probate jurisdiction in the county of the adult's residence, for an order to enjoin interference with the delivery of protective services arranged by the division or unit with the consent of the endangered adult, when such interference is occurring.
(20) Petition the probate court having jurisdiction in the county in which the endangered adult resides, to secure a protective order requiring that the adult receive protective services, only when:
(A) the individual does not consent, or withdraws consent previously given, to the receipt of the protective services; and
(B) the individual is an endangered adult under IC 12-10-3-2(a); and
(C) the individual, in the opinion of the APS unit, lacks the capacity to understand the clear consequences of his or her decisions, in accordance with IC 29-1-18.
A petition for a protective order does not constitute an action for guardianship.
(21) When a protective order is required, approve and submit to the court, a plan for the provision of the protective services, which includes, at the minimum, the items identified in subdivision (16) of this section.
(22) Petition the court to modify or terminate a protective services order, as necessary, as per IC 12-10-3-25.
(23) Petition the court to hold a hearing on the question of continuing jurisdiction, as per IC 12-10-3-26.

(Division of Disability and Rehabilitative Services; 460 IAC 1-2-5; filed Oct 30, 1985, 10:48 a.m.: 9 IR 479; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1279; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-5) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-5) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-6 Coordinator's qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 6. An adult protective services unit coordinator shall have, at a minimum:
(1) a bachelor's degree in an appropriate area of concentration, with one (1) relevant internship; or
(2) two (2) years of experience in investigation or other relevant work.

(Division of Disability and Rehabilitative Services; 460 IAC 1-2-6; filed Oct 30, 1985, 10:48 a.m.: 9 IR 480; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1280; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-6) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-6) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-7 Complaints regarding residents of health facilities

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 16-28; IC 35-42-2-1; IC 35-46-1-13

Sec. 7. DDARS and the APS unit shall:

(1) refer reports concerning individuals who are residents of health facilities licensed under IC 16-28 to the Indiana state department of health immediately; and

(2) cooperate with the Indiana state department of health in these cases and carry out the remaining activities of case processing at the request of the department;

DDARS shall notify the appropriate APS unit of the referral to the Indiana state department of health, and all APS units shall notify DDARS of referrals to the Indiana state department of health. *(Division of Disability and Rehabilitative Services; 460 IAC 1-2-7; filed Oct 30, 1985, 10:48 a.m.: 9 IR 480; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1280; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-7) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-7) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-2-8 Indiana state department of health; duties

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 16-28; IC 35-42-2-1; IC 35-46-1-13

Sec. 8. The Indiana state department of health shall:

(1) receive reports of endangered adults who are residents of facilities licensed under IC 16-28 from DDARS and the APS units;

(2) refer appropriate cases (as defined by the Indiana state department of health) to DDARS or the APS units for investigation, assessment and to assure the provision of protective services; and

(3) send completed report forms for all reports of endangered adults, whether substantiated or unsubstantiated, and whether primarily reported to the Indiana state department of health, DDARS or the APS units to DDARS for statistical and substantive records.

(Division of Disability and Rehabilitative Services; 460 IAC 1-2-8; filed Oct 30, 1985, 10:48 a.m.: 9 IR 480; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1280; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-8) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-8) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-9 Maintenance of records

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3-13; IC 35-42-2-1; IC 35-46-1-13

Sec. 9. (a) For substantiated reports, DDARS and the APS units shall maintain identifying records concerning:

(1) reports which identify the endangered adult;

(2) types of protective services provided, and identity of the service provider(s); and

(3) agencies, persons, or institutions who are determined to have permitted or inflicted neglect, battery, or exploitation.

(b) For unsubstantiated reports, DDARS shall:

(1) receive all identifying records concerning unsubstantiated reports (as determined by the APS units) from the APS units;

(2) destroy identifying information on said records within one hundred eighty (180) days after the receipt of those records; and

(3) maintain nonidentifying statistical records concerning unsubstantiated reports, and make this information available to the entities listed at IC 12-10-3-13.

(Division of Disability and Rehabilitative Services; 460 IAC 1-2-9; filed Oct 30, 1985, 10:48 a.m.: 9 IR 481; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1281; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-9) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-9) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-10 Reporting battery, neglect, or exploitation

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 10. (a) Persons shall report known or suspected neglect, battery, or exploitation of an adult to DDARS, an APS unit, or a law enforcement agency by telephone, in writing, or in person.

(b) Requirements for confidentiality of reports shall be as follows:

(1) The identity of the reporting person shall be kept confidential and be disclosed only with the written consent of that person or by judicial process.

(2) In no event, however, shall the identity of the person who made the report be disclosed to an alleged abuser, except by judicial order.

(c) Requirements for classification and transmittal of reports shall be as follows:

(1) Every incident of neglect, battery, or exploitation which is received by the unit shall be reported to DDARS on forms provided by DDARS within twenty (20) calendar days of receiving the report.

(2) Within thirty (30) calendar days of completing the investigation, the unit shall make a determination and classify all reports as substantiated or unsubstantiated, and transmit said determination to DDARS.

(3) When the classification of a substantiated report has changed to unsubstantiated, the unit shall notify DDARS and transmit all identifying records as required in section 5(14) of this rule.

(Division of Disability and Rehabilitative Services; 460 IAC 1-2-10; filed Oct 30, 1985, 10:48 a.m.: 9 IR 481; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1281; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-10) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-10) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-11 Rights of the alleged endangered adult

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 11. (a) Requirements for a right to counsel shall be as follows:

(1) At any time, a person who may be designated an endangered adult has the right to secure legal counsel; either a private attorney or if eligible, a legal services attorney.

(2) If the endangered adult does not consent or has withdrawn consent to receive protective services and a petition has been filed in probate court, the endangered adult is entitled:

(A) to be represented by counsel; and

(B) to have the court appoint counsel if said endangered adult is determined to be indigent.

(3) If the endangered adult is receiving protective services and an individual interferes with the provision of those services, the endangered adult is entitled to be represented by the prosecuting attorney's office in obtaining an order to enjoin the interference with the delivery of the service.

(b) The endangered adult has the right to protective services that offer the least restrictive alternative.

(c) The endangered adult has the right to privacy and confidentiality, within the boundaries of IC 12-10-3.

(d) The protective services plan must take into account, to the extent feasible, the expressed preferences of the endangered adult.

(e) A competent adult, even though endangered, has the right to refuse protective services. However, the APS unit should make every effort to fully inform the endangered adult of the benefits available from protective services, and of the problems which could be exacerbated if protective services were refused.

(f) The endangered adult has the right to have court-ordered protective services reviewed by the court once every six (6) months. *(Division of Disability and Rehabilitative Services; 460 IAC 1-2-11; filed Oct 30, 1985, 10:48 a.m.: 9 IR 481; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1281; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-11) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-11) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-2-12 Appeal rights of the allegedly endangered adult

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 12. (a) An endangered adult, aggrieved by an action of the adult protective services unit or by DDARS regarding adult protective services may appeal that action to DDARS, after attempting to resolve the problem with the APS unit.

(b) The decision to conduct an investigation pursuant to a report under IC 12-10-3, is not appealable.

(c) The request for a hearing must be submitted in writing and signed by the appellant or his/her representative. This request must be received by DDARS within thirty (30) calendar days of the appellant's notification of the action being appealed.

(d) DDARS shall hold the hearing within thirty (30) calendar days after receipt of the request for a hearing.

(e) The hearing shall be conducted in accordance with the Indiana Administrative Orders and Procedures Act, IC 4-21.5.

(f) DDARS shall notify the appellant and the adult protective services unit by registered mail of the appeal decision within ten (10) calendar days after the hearing. *(Division of Disability and Rehabilitative Services; 460 IAC 1-2-12; filed Oct 30, 1985, 10:48 a.m.: 9 IR 482; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1282; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA) NOTE: Transferred from the Department on Aging and Community Services (450 IAC 1-2-12) to the Division of Aging and Rehabilitative Services (460 IAC 1-2-12) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

Rule 3. Rate-Setting Criteria for Providers in the Assistance to Residents in County Homes Program (ARCH) and the Room and Board Assistance Program (RBA)

460 IAC 1-3-1 Policy; scope (Repealed)

Sec. 1. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-2 Definitions (Repealed)

Sec. 2. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-3 Accounting records; retention schedule; audit trail; accrual basis; segregation of accounts by nature of business and by location (Repealed)

Sec. 3. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-4 Financial report to division; annual schedule; prescribed form; extensions; penalty for untimely filing (Repealed)

Sec. 4. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-5 New provider; initial financial report to division; criteria for establishing initial interim rates; supplemental report; base rate setting (Repealed)

Sec. 5. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-6 Active providers; rate review; annual request; additional requests; requests due to change in law; request concerning capital return factor; computation of factor (Repealed)

Sec. 6. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-7 Request for rate review; budget component; occupancy level assumptions; effect of inflation assumptions (Repealed)

Sec. 7. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-8 Limitations or qualifications to ARCH/RBA reimbursement; advertising; vehicle basis; litigation expenses (Repealed)

Sec. 8. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-9 Criteria limiting rate adjustment granted by division (Repealed)

Sec. 9. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-10 Computation of rate; allowable costs; review of cost reasonableness (Repealed)

Sec. 10. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-11 Allowable costs; services provided by parties related to provider (Expired)

Sec. 11. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-12 Allowable costs; capital return factor (Repealed)

Sec. 12. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-13 Allowable cost; capital return factor; computation of use fee component; interest; allocation of loan to facilities and parties (Repealed)

Sec. 13. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-14 Allowable costs; capital return factor; computation of return on equity component (Repealed)

Sec. 14. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-15 Allowable costs; capital return factor; use fee; depreciable life; property basis (Repealed)

Sec. 15. *(Repealed by Division of Disability and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-16 Capital return factor; basis; historical cost; mandatory record keeping; valuation (Expired)

Sec. 16. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-17 Capital return factor; basis; sale or capital lease of facility; valuation; sale or lease among family members (Expired)

Sec. 17. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-18 Unallowable costs; cost adjustments; charity and courtesy allowances; discounts; rebates; refunds of expenses (Expired)

Sec. 18. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-19 Allowable costs; wages; costs of employment; record keeping; owner or related party compensation

(Expired)

Sec. 19. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-20 Allowable costs; calculation of allowable owner or related party compensation; wages; salaries; fees; fringe benefits (Expired)

Sec. 20. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-21 Administrative reconsideration; appeal (Expired)

Sec. 21. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

Rule 3.3. Residential Care Assistance Program Reimbursement

460 IAC 1-3.3-1 Policy; scope

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30; IC 16-28

Sec. 1. (a) This rule sets forth the per diem rate for reimbursement of providers providing residential care to recipients receiving residential care assistance from the division.

(b) Reimbursement is contingent upon current licensure by the Indiana state department of health for facilities requiring licensure and a current provider agreement with the division.

(c) The per diem reimbursements set forth a per diem rate that is based on the costs that must be incurred by efficiently and economically operated facilities in order to provide room, board, laundry, and other services, along with administrative direction to recipients. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.3-1; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3643)*

460 IAC 1-3.3-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30; IC 16-28

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "County home" means a residential facility owned, staffed, maintained, and operated by a county government that provides residential care to individuals.

(c) "Division" means the division of disability, aging, and rehabilitative services.

(d) "Facility" means a county home or residential home with a current contract with the division to provide residential care assistance.

(e) "Recipient" means an individual who is receiving residential care assistance.

(f) "Residential care" means room, board, and laundry, along with minimal administrative direction.

(g) "Residential care assistance" means state financial assistance through the division for residential care.

(h) "Residential home" means a facility licensed under IC 16-28 or an accredited Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organization/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal, that provides residential care to individuals. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.3-2; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3.3-3 Per diem reimbursement rates

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6-4; IC 12-30; IC 16-28

Sec. 3. (a) Subject to the availability of funds appropriated for the residential care assistance program, a facility that is not licensed under IC 16-28 that is providing residential care shall receive per diem reimbursement of twenty-seven dollars ($27) for

each recipient. If such facility charges the general public a rate of less than twenty-seven dollars ($27), the facility shall receive per diem reimbursement from the division equal to the rate the facility charges the general public.

(b) Subject to the availability of funds appropriated for the residential care assistance program, a facility that is licensed under IC 16-28 that is providing residential care shall receive per diem reimbursement of thirty-nine dollars and thirty-five cents ($39.35) for each recipient receiving residential care assistance from the division. This per diem reimbursement takes into account the rules for residential care for facilities that are licensed under IC 16-28. If such facility charges the general public a rate of less than thirty-nine dollars and thirty-five cents ($39.35), the facility shall receive per diem reimbursement from the division equal to the rate the facility charges the general public.

(c) If a recipient has applied excess income toward residential care assistance pursuant to IC 12-10-6-4(b), the amount paid by the division to the affected provider will be reduced by the amount received by the recipient. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.3-3; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3.3-4 Annual review of per diem reimbursement rate

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30; IC 16-28

Sec. 4. (a) By March 1 of each year, providers receiving reimbursement from the division to provide residential care shall submit on a form approved by the division a summary of the provider's costs.

(b) Based upon the cost information submitted pursuant to subsection (a), the division shall annually review the per diem reimbursement rates established by this article. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.3-4; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

Rule 3.5. Residential Care Assistance

460 IAC 1-3.5-1 Definitions (Expired)

Sec. 1. *(Expired under IC 4-22-2.5, effective January 1, 2004.)*

460 IAC 1-3.5-2 Availability of funds (Expired)

Sec. 2. *(Expired under IC 4-22-2.5, effective January 1, 2004.)*

460 IAC 1-3.5-3 Enrollment at a facility (Expired)

Sec. 3. *(Expired under IC 4-22-2.5, effective January 1, 2004.)*

460 IAC 1-3.5-4 Return to a facility (Expired)

Sec. 4. *(Expired under IC 4-22-2.5, effective January 1, 2004.)*

Rule 3.6. Residential Care Assistance Program

460 IAC 1-3.6-1 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30; IC 16-28

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "County home" means a residential facility owned, staffed, maintained, and operated by a county government that provides residential care to individuals.

(c) "County office" means the county office of family and children.

(d) "Division" means the division of disability, aging, and rehabilitative services.

(e) "Residential care" provided in a county home is nonmedical assistance provided to a resident. Residential care provided in a residential home is room, board, and laundry, along with minimal administrative direction.

(f) "Residential care assistance" means state financial assistance through the division paid on behalf of a resident of a county home or residential home who has been found to be eligible for assistance.

(g) "Residential home" means a residential care setting licensed under IC 16-28 or an accredited Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.6-1; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1140; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-3.6-2 Eligibility for assistance for county home residents

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30

Sec. 2. (a) An individual is eligible for residential care assistance in a county home if the individual:

(1) is at least sixty-five (65) years of age, blind, or disabled;

(2) is a resident of a county home; and

(3) would be eligible for federal Supplemental Security Income assistance except for the fact that the individual is residing in a county home.

(b) An individual will be determined to be eligible for federal Supplemental Security Income assistance if the individual does any of the following:

(1) Presents verification that the individual is currently receiving federal Supplemental Security Income benefits.

(2) Presents verification that the individual is currently receiving Medicaid benefits.

(3) It is determined by the county office that the individual is eligible for federal Supplemental Security Income benefits. An individual shall be determined to be eligible for federal Supplemental Security Income benefits if the individual:

(A) has a disability that meets the definition of disability contained in 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(B); and

(B) is financially eligible for federal Supplemental Security Income benefits.

(c) An individual who is disabled because of mental illness may be admitted to a county home only to the extent that money is available for the individual's care. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.6-2; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1140; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-3.6-3 Eligibility for assistance in a residential home

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6

Sec. 3. (a) An individual is eligible for residential care assistance in a residential home if the individual:

(1) is a current recipient of Medicaid or federal Supplemental Security Income benefits; and

(2) can be adequately cared for in a residential care setting.

(b) An individual will be determined to be able to be adequately cared for in a residential home if an individual is admitted to or cared for in a residential home.

(c) An individual diagnosed with mental retardation may not be admitted to a residential home.

(d) An individual who is disabled because of mental illness may be admitted to a residential home only to the extent that money is available for the individual's care. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.6-3; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1140; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-3.6-4 Continuing financial eligibility

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30

Sec. 4. An individual who is receiving residential care assistance and has an increase in income that would render the individual ineligible for residential care assistance may elect to continue to be eligible for residential care assistance by paying the

excess income to the county home or residential home that provides residential care to the individual. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.6-4; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1141; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-3.6-5 Annual review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30

Sec. 5. Eligibility for residential care assistance shall be redetermined by the county office on an annual basis, upon a change in the eligible individual's status as a recipient of Medicaid or federal Supplemental Security Income benefits, or upon a change in the medical status of a resident of a county home that would render the resident ineligible for federal Supplemental Security Income benefits. *(Division of Disability and Rehabilitative Services; 460 IAC 1-3.6-5; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1141; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

Rule 4. Community and Home Options to Institutional Care for the Elderly and Disabled Program

460 IAC 1-4-1 Purpose

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-10

Sec. 1. The purpose of this rule is to implement the community and home options to institutional care for the elderly and disabled program, authorized by IC 12-10-10, which provides case management services, assessment, and in-home and community services to individuals who are at least sixty (60) years of age or persons of any age who have a disability due to a mental or physical impairment and who are found to be at risk of losing their independence. *(Division of Disability and Rehabilitative Services; 460 IAC 1-4-1; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1103; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-4-2 Definitions

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-7-2-184; IC 12-10-1-1; IC 12-10-1-4; IC 12-10-10

Sec. 2. As used in this rule, the following definitions apply:

(1) "AAA" refers to the agency designated by the bureau in each planning and service area under IC 12-10-1-4(18).

(2) "Adult day care services" means the provision of a comprehensive structured program in a protective setting during the daytime and early evening hours.

(3) "Advocate" means any legal representative or any other person whom the applicant or participant chooses to assist him or her at any stage of the appeals process.

(4) "Applicant" means an individual who resides in Indiana and who has submitted an application to the area agency on aging for the CHOICE program.

(5) "At risk of losing the individual's independence" means that the individual meets the criteria specified in IC 12-10-10-4(b).

(6) "Attendant care services" means assistance with nonmedical personal care services such as:

- (A) personal hygiene activities;
- (B) ambulation and transfer of the individual;
- (C) assisting the individual with communication;
- (D) disposal of bodily waste;
- (E) meeting the individual's nutritional needs; and
- (F) ensuring the individual's physical safety.

(7) "Bureau" refers to the bureau of aging and in-home services established within the division under IC 12-10-1-1.

(8) "Care plan" means the plan of services developed by the AAA under IC 12-10-10-1(2).

(9) "Case management" means the administrative functions performed by the AAA under IC 12-10-10-1.

(10) "CHOICE" refers to the community and home options to institutional care for the elderly and disabled program.

(11) "CHOICE guidelines and procedures manual" refers to the document published by the division to define the protocol of the CHOICE program.
(12) "CHOICE representative" means a person authorized to act on behalf of an individual, as specified under section 4 of this rule, if the individual lacks the capacity to make a knowing and informed decision regarding his or her own care.
(13) "Community and home care services", "in-home and community services", or "CHOICE services" means those services specified in IC 12-10-10-2.
(14) "Division" or "DDARS" refers to the division of disability, aging, and rehabilitative services.
(15) "Home delivered meals" means an appropriate, nutritionally balanced meal that meets at least one-third (1/3) of the current recommended dietary allowance (RDA) delivered to the individual's home.
(16) "Home health services and supplies" means services and supplies that include all health monitoring activities performed in the home, the supervision of medication, care and maintenance of any appliances or equipment necessary to maintain health, safety, and independence, and dressing changes.
(17) "Homemaker services" means those household tasks that enable an individual to live in a clean, safe, and healthy home environment, including grocery shopping and meals preparation.
(18) "Institutional care" means continuous, twenty-four (24) hour residential care provided by, among others, hospitals, nursing facilities, intermediate care facilities for the mentally retarded, community residential facilities for the developmentally disabled, residential facilities for the mentally ill, and state owned and operated institutions.
(19) "Other services necessary to prevent institutionalization" includes, but is not limited to, the following:
(A) "Minor home modifications" means selected internal and external modifications to the home environment, related specifically to the individual's functional limitations, which will assist the individual in remaining in the current living situation.
(B) "Adaptive aids and devices" means controls, appliances, or supplies determined necessary to enable the individual to increase the ability to function in a home and community-based setting with independence and physical safety.
(20) "Respite care services" means services provided temporarily or periodically to participants in the absence of the usual unpaid caregiver, including services provided in the home or on an overnight basis in an approved out-of-home setting such as a nursing facility.
(21) "Transportation" means transporting the individual to and from medical or therapeutic activities that are directly related to maintaining the individual's independence.

(Division of Disability and Rehabilitative Services; 460 IAC 1-4-2; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1104; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-4-3 Selection of local administrative units

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-10-1

Sec. 3. (a) The division shall contract with the AAAs to administer CHOICE funds. These activities include local administrative functions, including, but not limited to, the following:
(1) Budgeting.
(2) Case management.
(3) Oversight.
(4) Monitoring.
(5) Quality assurance.
(6) Submission of fiscal claims to the division.
(b) Each AAA shall submit a plan to the division that contains the following:
(1) The referral and intake process, including a description of how the process of eligibility determination will take place.
(2) The assessment process, format, and procedures used by case managers employed by the AAA to do assessments.
(3) Procedures for an offer of an assessment to current nursing home residents who apply for CHOICE.
(4) Policies for the selection and qualifications of staff.
(5) Procedures for development of and expected timelines for care plan development, including the process for involving the client or family in the development of the care plan.
(6) All available long term support services, both public and private, within the area.

(7) Policies and procedures for the case management and service coordination system.
(8) Policies and procedures for coordinating CHOICE with the Medicaid waivers and other funding sources for in-home and community-based services.
(9) The CHOICE cost sharing plan, including cost share collection procedures.
(10) The current appeal procedures, including procedures for notifying applicants or participants of the right to an administrative hearing.
(11) Policies and procedures for waiting lists for CHOICE services.
(12) Policies and procedures for approved waivers and for requesting state approved waivers.
(13) Description of the development of the budget, as approved by the division, including the following:
(A) A breakdown of proposed spending on client services.
(B) Assessments.
(C) Care plan development.
(D) Reassessments.
(E) AAA administration.
(F) Any other appropriate costs.
(14) The estimated number of individuals who have a high functional need that warrants exceeding the established benchmark by twice the stated amount, and the methods of managing those costs.
(15) Procedures for selection of service providers.
(16) Policies and procedures for case file documentation and record keeping.
(17) Description of follow-up evaluation.
(18) The manner in which care plans and services are to be evaluated and monitored.

(c) Each AAA shall arrange for the provision of individually needed CHOICE services through local provider agencies or individuals.

(d) An AAA may provide community and home care services to individuals in the CHOICE program if the division determines that an appropriate alternative provider agency is not available. Before an AAA can provide community and home care services to individuals in the CHOICE program, the AAA must be granted a waiver from the division for the specific services to be delivered by the AAA.

(e) Under subsection (d), an AAA submitting a waiver request to provide services shall include documentation of the unavailability of appropriate alternative providers, including, but not limited to, failure to obtain responses after advertising the availability of CHOICE funds and description of the efforts that it has exercised to solicit provider expansion into the given area or description of the efforts utilized to stimulate new provider growth.

(f) The contract period for an AAA shall be two (2) years.

(g) The AAA and all CHOICE providers shall abide by all applicable state and federal laws and regulations. *(Division of Disability and Rehabilitative Services; 460 IAC 1-4-3; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1104; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-4-4 Participant involvement in decision making

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-10; IC 16-36-1

Sec. 4. (a) An individual has the right to be involved in the formulation of the care plan and shall be involved at every stage of decision making regarding his or her care and living situation.

(b) If the case manager has reason to believe that an individual lacks the capacity to make a knowing and informed decision regarding his or her own care, the case manager shall consult with the individual's physician. The individual's physician shall make a determination regarding the individual's capacity to make a knowing and informed decision. If the physician determines that the individual lacks the capacity to make a knowing and informed decision regarding his or her own care, the application and the care plan and any revisions must be approved and signed by the individual's CHOICE representative.

(1) An individual's CHOICE representative is any person who is legally authorized to make health care decisions on behalf of the individual under IC 16-36-1.
(2) If there is no person authorized to make health care decisions on behalf of the individual, then the individual's attending physician may act as the individual's CHOICE representative.

(c) If the individual is physically unable to sign the application or care plan, but has the capacity to make a knowing and informed decision regarding his or her own care, the individual may indicate his or her assent and authorize another to sign.

(d) Notwithstanding the fact that an individual needs a CHOICE representative, the case manager shall work and consult with the individual who will be receiving the services and shall take his or her preferences into consideration when developing a care plan, to the extent that the individual's health or safety is not threatened. *(Division of Disability and Rehabilitative Services; 460 IAC 1-4-4; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1105; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-4-5 Assessment

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-10

Sec. 5. (a) The long term care services eligibility screen developed by the division shall be used by the AAA to assess the applicant's risk of losing his or her independence and to assist in the development of a care plan if appropriate.

(b) Every applicant is eligible for an assessment. Applicants shall not be charged a fee for the assessment.

(c) The initial application and approval of the care plan must be signed by the applicant or by his or her CHOICE representative.

(d) Before each assessment, an explanation of the following must be given to the applicant:

(1) The purpose of the CHOICE assessment.

(2) The applicant's right to decide at any time to stop the process, and to refuse the offered in-home and community services.

(3) The applicant's right to appeal AAA decisions regarding eligibility or services to be provided.

(e) The AAA shall make a program eligibility determination based upon the results of the long term care services eligibility screen.

(f) When a decision is made regarding eligibility, the AAA shall notify the individual in writing of the following:

(1) Whether or not the applicant is eligible for the CHOICE program and, if eligible:

(A) that the applicant is approved for the development of a care plan; or

(B) that, due to the lack of availability of funds, the applicant will be placed on a waiting list if one is available.

(2) That the applicant has the right to appeal this eligibility decision.

(Division of Disability and Rehabilitative Services; 460 IAC 1-4-5; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1106; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-4-6 Care plan

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-3; IC 12-10-10

Sec. 6. (a) If the applicant is eligible for CHOICE services, the AAA shall develop a care plan regardless of the applicant's income and assets.

(b) Notwithstanding subsection (a), a care plan shall not be developed in any of the following circumstances:

(1) If the applicant or his or her CHOICE representative does not want to proceed with the development of a care plan.

(2) If the applicant or his or her CHOICE representative refuses to release the information that is necessary to develop a care plan.

(3) If the AAA does not have the resources, within the available funds, to develop and carry out a care plan.

(c) All CHOICE service decisions regarding the individual shall be made in accordance with the best interests of that individual.

(d) The applicant and his or her CHOICE representative shall be involved in the development of the care plan. The applicant or his or her CHOICE representative may decide whether family or others may participate in the development of the care plan and in any update of the care plan.

(e) A care plan shall describe each of the following:

(1) The services needed to maintain independence.

(2) The services already being provided by other sources.

(3) The cost of the services still needed.

(4) The payment sources of those services.

(5) The no-cost or voluntary services that can be provided to meet the individual's needs.

(Division of Disability and Rehabilitative Services; 460 IAC 1-4-6; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1106; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-4-7 Duties of the AAA

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-3; IC 12-10-10

Sec. 7. (a) Each AAA shall maintain individual case records for each individual who applies for or receives services. Each individual's records shall be maintained by the AAA for a minimum of three (3) years after the individual's termination from the program or other final action.

(b) The AAA shall maintain the confidentiality of CHOICE files and records at all times. Such files and records shall not be disclosed except:

(1) to the individual or his or her CHOICE representative;

(2) to a person representing the individual in an appeal from a CHOICE decision;

(3) to the division or other state agencies for purposes of securing in-home and community services;

(4) to an adult or child protective services investigator under IC 12-10-3 and IC 31-6-11-3 *[IC 31-6 was repealed by P.L.268-1995, SECTION 17, effective July 1, 1995.]*;

(5) under court order; or

(6) as authorized by the individual or his or her CHOICE representative.

(c) The AAA shall use CHOICE records for purposes of the CHOICE program and for the coordination of other related services only. Any disclosure of information in an individual's CHOICE file for purposes of coordinating related services shall be limited to the information that is directly relevant to and required by the other related services.

(d) CHOICE funding shall be used after all other possible payment sources have been identified and all reasonable efforts have been employed to utilize those sources.

(e) The AAA shall reduce services that are paid by CHOICE in any of the following circumstances:

(1) When the assessed level of need diminishes as established by an updated care plan.

(2) When the AAA's CHOICE service funds are insufficient to meet the service commitment to current participants, all reasonable efforts have been made to secure resources to avoid service reductions, the AAA has stopped performing new assessments and care plans, and the AAA has adopted a fair and equitable policy for distributing service reductions among participants.

(3) When an individual receiving services becomes eligible under a Medicaid home and community-based services waiver and begins receiving those services that are allowable through the Medicaid program.

(4) When a current participant becomes eligible for in-home and community services from other sources for which he or she was not previously eligible and is receiving those services.

(5) When other resources become available in the community and the individual begins receiving those services that were not available at the time of the development of the previous care plan.

(6) If services needed by the applicant, as determined by the assessment, would be so costly that CHOICE payment for the needed services would cause the AAA to exceed the allowable cost per individual determined by the division.

(f) The AAA shall terminate services that are paid by CHOICE in any of the following situations:

(1) When the individual's health or personal circumstances have improved so that he or she no longer needs in-home and community-based services to maintain his or her independence in a safe, noninstitutional environment.

(2) When the health, welfare, or safety of the participant or of others who interact with the individual can no longer be reasonably assured.

(3) When the services being provided are detrimental to the individual's health.

(4) When the individual or his or her CHOICE representative has fraudulently obtained or misused CHOICE funded services.

(5) Upon the death of the individual receiving services.

(6) When the individual or his or her CHOICE representative refuses to comply with cost sharing under section 8 of this rule.

(7) When the individual or his or her CHOICE representative voluntarily requests termination.

(8) When the individual or his or her CHOICE representative refuses services necessary for his or her health and well-being.

(g) A participant who is found eligible for CHOICE services, but does not receive CHOICE services for a period of six (6) months due to institutionalization or lack of need, may be terminated from CHOICE services. Restoration of services, after this six (6) month period, shall be within the availability of funds and continued need for services.

(h) No CHOICE services funds shall be used to purchase real estate.

(i) No CHOICE services funds shall be used to provide care or services to an individual residing in an institution. However, funds may be used for assessment and care plan development for current residents in institutions who could return to their homes if determined to be eligible for the CHOICE program.

(j) Unless no CHOICE funds are available, the AAA shall offer initial assessments and, when appropriate, individual care plans to applicants, regardless of the applicant's income and assets.

(k) The division shall establish a maximum level of CHOICE fund expenditure per individual based on costs calculated by the division. This maximum expenditure is not to be applied monthly, but over a period of three (3) consecutive months. The dollar amount shall be published in the CHOICE guidelines and procedures. *(Division of Disability and Rehabilitative Services; 460 IAC 1-4-7; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1106; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-4-8 Cost sharing

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-11-8

Sec. 8. (a) Cost sharing is a method of cost reimbursement for those individuals who can pay all or a portion of the cost of CHOICE services rendered under IC 12-10-11-8(11).

(b) Each AAA shall comply with the cost of services formula established under IC 12-10-11-8(11).

(c) The collection of cost share shall be the responsibility of the AAA in conjunction with the service provider. *(Division of Disability and Rehabilitative Services; 460 IAC 1-4-8; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1107; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-4-9 Conflicts of interest

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-10

Sec. 9. (a) The AAA shall not contract for CHOICE services with any service provider that is owned or controlled by a member of the AAA's board of directors or a member of the AAA's staff.

(b) The AAA shall not contract for CHOICE services with any service provider that is owned or controlled by a relative (father, mother, brother, sister, uncle, aunt, husband, wife, son, daughter, son-in-law, daughter-in-law, grandmother, grandfather, grandson, or granddaughter) of any member of the AAA's board of director or executive staff, including the executive director.

(c) An AAA that wishes to contract with a service provider contrary to this section, due to the lack of an alternative provider or because it is in the best interest of the participant, must request and be granted a waiver from the division. *(Division of Disability and Rehabilitative Services; 460 IAC 1-4-9; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1108; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-4-10 Appeals

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 4-21.5-1; IC 4-21.5-3-27; IC 12-10-10

Sec. 10. (a) Except as provided in subsection (b), applicants, participants, or their CHOICE representative shall have a right to appeal decisions regarding CHOICE eligibility and services if:

(1) they are found ineligible for the CHOICE program;

(2) they disagree with the decision either to deny a service which they believe they should receive or to discontinue or reduce a particular service which they are currently receiving; and

(3) they believe that any decision made or action taken concerning the CHOICE services they receive was not appropriate or in their best interests.

(b) The case manager is responsible for answering questions and attempting to resolve any problems or complaints before the applicant or participant resorts to the appeal process. The case manager is also responsible for documenting all complaints and actions taken in the case file in order to create a complete record for appeal.

(c) In case of applicants or participants who lack the capacity to make a knowing and informed decision regarding their own care, their CHOICE representative may appear on their behalf throughout the appeals process.

(d) Individuals or their CHOICE representative shall comply with the following appeals process:

STEP ONE: Individuals or their CHOICE representative shall first discuss any questions, concerns, or problems regarding CHOICE services with the case manager and the case manager supervisor. This informal meeting may take place either at the agency or at the applicant's or participant's home. The applicant or participant may be accompanied by an advocate. Within five (5) working days of the date of the informal meeting, the case manager supervisor shall inform the applicant or participant in writing of the decision reached on the issues raised at the meeting. The case manager supervisor shall also inform the applicant or participant that he or she may request an agency review to the AAA's executive director or designee within eighteen (18) calendar days of the date of the case manager supervisor's decision.

STEP TWO: Agency review as follows:

(A) The executive director or his or her designee shall conduct the agency review at the applicant's or participant's home or at the AAA office, whichever is more convenient for the applicant or participant. The applicant or participant, his or her advocate (if desired), and the case manager or the case manager's supervisor shall attend the review.

(B) Applicants and participants shall be given the opportunity to testify, present supporting materials, and explain why they disagree with the action or decision and what they would view as an appropriate alternative. The case manager or case manager supervisor may testify and explain the reasons for the decision or action taken.

(C) Immediately following the review, the executive director or designee conducting the review shall consider the comments of the applicant or participant, his or her advocate, and the case manager or the case manager's supervisor.

(D) Within five (5) working days, the executive director, or designee after consulting with the executive director, shall prepare the agency's final decision, in writing, including findings of fact and the specific reason for the decision. The applicant or participant and his or her advocate, if any, shall each be sent a copy of the decision by registered or certified mail, return receipt requested. The decision shall inform the applicant or participant of his or her right to have an administrative hearing under STEP THREE if dissatisfied with the agency's final decision.

STEP THREE: Administrative hearing as follows:

(A) If an applicant or participant is dissatisfied with the decision reached at the agency review, then he or she may appeal the decision by requesting an administrative hearing. The applicant, participant, or CHOICE representative shall make the request for an administrative hearing, in writing, including a statement of the issues the applicant or participant wishes reviewed. The request shall be signed and dated. The written request shall be sent to the deputy director of the division, bureau of aging and in-home services within eighteen (18) days of the date of the decision from the agency review.

(B) Administrative hearings shall be conducted by administrative law judges (ALJs), or hearing officers, appointed by the DDARS director. The ALJ shall notify the applicant or participant and all involved persons of the date, time, and location of the hearing at least five (5) working days in advance. The applicant or participant shall be notified by registered or certified mail, return receipt requested. The AAA shall forward all written case documentation to the ALJ prior to the date of the hearing. The hearing shall be conducted in accordance with IC 4-21.5-1.

(C) Immediately, but no later than five (5) days following the hearing, the ALJ shall prepare the proposed decision, including a report of the findings of fact and the reasons for the decision based on those findings of fact. In accordance with IC 4-21.5-3-27, the ALJ shall forward the proposed decision to the DDARS director. A copy of the proposed decision shall be sent to the AAA, the applicant or participant, and his or her advocate, if any, by registered or certified mail, return receipt requested.

(D) The director of the division shall either affirm, modify, or dissolve the ALJ's proposed decision. The AAA, the applicant or participant, and his or her advocate shall be notified of the director's final order by registered or certified mail, return receipt requested.

(e) If a participant appeals a decision that terminates any service that is already being provided, then the service in question will usually be continued until the appeal is resolved, unless:

(1) the services would be harmful to the participant; or

(2) the services violate state or federal law or regulations and internal policies of the CHOICE program or the division.

(f) An applicant or participant may bring to his or her informal review, agency review, and administrative hearing any person he or she wishes to be present, including legal counsel. The division shall not pay for legal counsel for an applicant or participant during the appeal process.

(g) Interpreter services will be made available to assist the deaf or non-English speaking person upon request. Reader services will be made available to assist the blind person upon request. However, if the applicant or participant requires these services for participation in the agency review or administrative hearing, the applicant or participant, prior to the date of the review, shall discuss the arrangements with the case manager.

(h) The AAA shall have in place at all times an appeals process that complies with this section. *(Division of Disability and Rehabilitative Services; 460 IAC 1-4-10; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1108; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-4-11 Guidelines and procedures

Authority: IC 12-10-10-6
Affected: IC 12-10-10

Sec. 11. (a) CHOICE guidelines and procedures shall be established by the division for the effective management of the program. These shall be in the form of a published manual.

(b) Revisions of the CHOICE guidelines and procedures may occur in the following circumstances:

(1) As necessary, as determined by the division, to provide clarity and consistency of program activities.

(2) CHOICE guidelines and procedures shall be open for comment at least annually.

(3) Revisions to the CHOICE guidelines and procedures may be made by the division after consideration of consumer needs, AAA recommendations, state law, division policy, or CHOICE board recommendations.

(4) The division shall provide notice to the public of revisions in guidelines and procedures by publications in the CHOICE board agenda posted before each meeting in the office of the division, bureau of aging and in-home services. Comments and recommendations for revision may be given during an official CHOICE board meeting.

(Division of Disability and Rehabilitative Services; 460 IAC 1-4-11; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1109; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

Rule 5. Adult Guardianship Services Program

460 IAC 1-5-1 Purpose

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7

Sec. 1. The purpose of this rule is to implement the adult guardianship services program authorized by IC 12-10-7, which includes the provision of full guardianships and least restrictive services to indigent adults who are unable to care for themselves properly or manage their own affairs without assistance due to certain incapacities or developmental disabilities. Program services include the identification and evaluation of adults who may need adult guardianship services. *(Division of Disability and Rehabilitative Services; 460 IAC 1-5-1; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3394; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-5-2 Definitions

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-9-1-1; IC 12-10-1-1; IC 12-10-7; IC 12-10-14-2; IC 16-36-1; IC 29-3-8; IC 30-5

Sec. 2. The following definitions apply throughout this rule:

(1) "Adult guardianship services" includes full guardianship and least restrictive services.

(2) "BAIHS" or "bureau" refers to the bureau of aging and in-home services established under IC 12-10-1-1, which monitors and coordinates the adult guardianship services program.

(3) "Division" or "DDARS" refers to the division of disability, aging, and rehabilitative services as established under IC 12-9-1-1.

(4) "Dual signature checking account" means an account that allows a recipient to write checks on his or her own but requires another person's signature before the checks are valid.

(5) "Guardian" means an individual or organization named by order of a court to exercise any or all powers specified in IC 29-3-8.

(6) "Incapacitated individual" means an individual as defined in IC 12-10-7-1.

(7) "Indigent adult" means an individual as defined in IC 12-10-7-2.

(8) "Least restrictive" means a course of action that allows the individual to live, learn, and work in a setting that places as few limits on the individual's rights and personal freedoms as appropriate to meet the needs of the individual.

(9) "Least restrictive services" refers to those services specified in IC 12-10-7-8.

(10) "Protected person" means an individual for whom a guardian has been appointed.

(11) "Provider" means an entity designated by the division under section 3 of this rule.

(12) "Recipient" means an individual receiving guardianship or least restrictive services.

(13) "Region" means a population or geographic area identified in a provider's adult guardianship services plan and approved by the division.

(14) "Representative" means any person who is legally authorized to make decisions on behalf of another under IC 16-36-1, or a power of attorney under IC 30-5.

(15) "Representative payee" means an individual or organization as defined in IC 12-10-14-2.

(Division of Disability and Rehabilitative Services; 460 IAC 1-5-2; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3394; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-5-3 Selection of providers

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7-8; IC 29-3

Sec. 3. (a) The division shall contract in writing with the designated adult guardianship services provider.

(b) In order to be designated as an adult guardianship services provider, an interested agency shall submit a proposal and an adult guardianship services plan to the division. The plan shall contain the following:

(1) The population or geographic area to be served.

(2) Qualifications and policies for the selection of employees.

(3) The referral and intake process.

(4) The assessment and reassessment process.

(5) Functions that volunteers may perform in the program.

(6) Policies and procedures for recruiting, training, and assigning volunteers.

(7) Policies and procedures for case file documentation and record keeping.

(8) A description of the manner in which ongoing cases will be evaluated and monitored.

(9) The criteria by which program activities will be evaluated.

(10) Policies and procedures for prioritization of eligible individuals on waiting lists for adult guardianship services.

(11) A description of the development of the budget, including a breakdown of proposed spending on adult guardianship services, assessments, service plan development, reassessments, provider administration, and any other appropriate costs.

(12) Procedures to avoid a conflict of interest for the provider in providing adult guardianship services to each recipient.

(c) The provider shall perform local administrative functions, including, but not limited to, the following:

(1) Budgeting.

(2) Oversight.

(3) Monitoring.

(4) Quality assurance.

(5) Submission of fiscal claims to the division.

(6) Case intake, assessment, and plan development.

(d) The provider shall have an employee devoted at least halftime to the adult guardianship services program as coordinator. The adult guardianship services coordinator shall be free from conflict of interest and shall have the following minimum qualifications:

(1) A bachelor's degree from a four (4) year accredited college or university. Two (2) years of experience serving as guardian

to an individual over eighteen (18) years of age under IC 29-3 may substitute for one (1) year of college or university training.

(2) Two (2) years of experience in social services.

(3) One (1) year of management experience.

(e) The board of directors of the provider shall recruit and appoint from the community an adult guardianship services committee of at least five (5) persons to provide advice to the employees and to the board of directors on action pertaining to adult guardianship services and program activities.

(f) The adult guardianship services committee must include, but is not limited to, at least one (1) representative from each of the following categories:

(1) An attorney or financial professional knowledgeable about guardianship issues.

(2) A psychiatrist, clinical psychologist, or psychiatric social worker.

(3) A developmental disabilities specialist.

(4) A person sixty (60) years of age or older, or a representative of older adults knowledgeable about guardianships.

(5) One (1) member of the board of directors. Except for one (1) member from the board of directors, an individual appointed to the adult guardianship services committee shall not be a member of the board of directors or employee of the provider.

(Division of Disability and Rehabilitative Services; 460 IAC 1-5-3; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3395; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-5-4 Participant involvement in decision making

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7-8

Sec. 4. An individual referred to the provider or the individual's representative shall be involved in the formation of the service plan and shall be consulted at every stage of decision making. *(Division of Disability and Rehabilitative Services; 460 IAC 1-5-4; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-5-5 Assessment

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7

Sec. 5. (a) The provider shall use the adult guardianship assessment instrument developed by the division to assess whether an individual referred to the provider is indigent or incapacitated, or both, and to assist in the development of a service plan to meet the individuals' needs.

(b) Within the availability of funds, every individual who is referred to the provider is eligible for an initial assessment. Individuals shall not be charged a fee for the initial assessment. *(Division of Disability and Rehabilitative Services; 460 IAC 1-5-5; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-5-6 Service plan

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7-8

Sec. 6. (a) If the individual referred to the provider is determined through the assessment to be eligible for adult guardianship services, the provider shall formulate and adopt an individualized service plan that provides the least restrictive service.

(b) The service plan shall describe each of the following:

(1) The individual's primary difficulties.

(2) The reason the individual was referred to the provider.

(3) The services needed and referrals made to obtain those services.

(4) Short term and long term objectives.

(5) Rationale for services.

(Division of Disability and Rehabilitative Services; 460 IAC 1-5-6; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct

1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-5-7 Specific tasks of the provider

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7-8; IC 29-3

Sec. 7. The provider shall perform the following duties:

(1) Provide adequate physical security of confidential data.

(2) Maintain a file for each protected person that documents any and all actions taken.

(3) Participate in contract performance reviews as requested by BAIHS.

(4) Develop program guidelines, policies, and procedures that conform to all applicable state and federal laws and BAIHS policies.

(5) Keep records and make reports as required by BAIHS and the court.

(6) Recruit and train appropriate volunteers as guardian assistants.

(7) Provide guidance and oversight to guardian assistants in the performance of their assigned duties.

(8) Recruit attorneys to provide legal services necessary to obtain guardianship services, preferably on a pro bono or reduced fee basis.

(9) Assist attorneys, as appropriate, in preparing material for legal presentation to the court.

(10) Assess each referred person to determine eligibility for guardianship or least restrictive services.

(11) Assure active participation of the adult guardianship services committee in determining the necessity of a guardianship or least restrictive service for each assessed individual.

(12) Perform all duties in accordance with IC 29-3 and any court order.

(13) Assess each recipient's income and disburse payment as appropriate for recipients receiving representative payee services.

(14) Maintain a separate account for each recipient whose funds are handled by the provider.

(15) Perform tasks associated with handling recipient funds in a manner that assures provider fiscal accountability.

(16) Monitor and evaluate all program activities on an ongoing basis.

(Division of Disability and Rehabilitative Services; 460 IAC 1-5-7; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-5-8 Provider policy conformance

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7-8

Sec. 8. (a) The provider shall coordinate with service providers in the area to obtain necessary direct services for the recipient. The provider shall not provide any other service to the recipient directly except guardianship and least restrictive services.

(b) If the direct services are not available from another provider, or if there are extraordinary circumstances making the provision of those services by the provider preferable, the provider must request a waiver from the division. The division may grant a waiver if there are no other providers available and willing to provide the direct services.

(c) The provider shall use standardized adult guardianship services program forms provided by the BAIHS.

(d) Where the assessment of an individual indicates the need for guardianship, the provider shall seek guardianship appointments from the court and may serve as the guardian. The provider shall provide least restrictive services.

(e) The provider shall not subcontract for the provision of guardianship or any least restrictive service or in any way delegate responsibility for any guardianship or least restrictive service. *(Division of Disability and Rehabilitative Services; 460 IAC 1-5-8; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-5-9 Confidentiality

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7-8

Sec. 9. (a) The provider shall receive and maintain all information, including, but not limited to, recipient information in a

confidential manner.

(b) All recipient information shall remain confidential, and access shall be limited to authorized employees of the provider. *(Division of Disability and Rehabilitative Services; 460 IAC 1-5-9; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3397; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-5-10 Conflict of interest

Authority: IC 12-9-2-3; IC 12-10-7-7
Affected: IC 12-10-7-8

Sec. 10. (a) The provider shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the recipient. Impropriety or conflict of interest refers to a situation in which the provider has a personal or financial interest, or both, that may be perceived as self-serving or adverse to the position or the best interest of the recipient.

(b) Employees of the provider shall be free from conflict of interest.

(c) The provider's adult guardianship services program volunteers shall be free from conflict of interest.

(d) The provider's adult guardianship services program advisory committee shall have a written plan for resolving conflicts of interest. *(Division of Disability and Rehabilitative Services; 460 IAC 1-5-10; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3397; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

Rule 6. Alzheimer's Disease and Related Senile Dementia Program

460 IAC 1-6-1 Purpose

Authority: IC 12-9-2-3; IC 12-10-4-6
Affected: IC 12-10-4

Sec. 1. The purpose of this rule is to establish criteria for the award of grants to be used for Alzheimer's disease and related senile dementia activities and to govern respite care pilot projects established under the Alzheimer's disease and related senile dementia program. *(Division of Disability and Rehabilitative Services; 460 IAC 1-6-1; filed Aug 17, 1995, 8:30 a.m.: 19 IR 37; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-6-2 Definitions

Authority: IC 12-9-2-3; IC 12-10-4-6
Affected: IC 12-9-1-1; IC 12-10-4; IC 12-10-5-2; IC 12-10-10-1

Sec. 2. The following definitions apply throughout this rule:

(1) "Adult day care services" refers to the provision of a comprehensive structured program in a protective setting during the daytime and early evening hours.

(2) "Alzheimer's disease" refers to a progressive degenerative disease that attacks the brain and results in impaired memory, thinking, and behavior as diagnosed by a qualified physician.

(3) "Alzheimer's disease and related senile dementia program" or "Alzheimer's program" refers to the program established under IC 12-10-4.

(4) "Dementia" or "related senile dementia" refers to a group of symptoms identified by a qualified physician, including, but not limited to, a decline in intellectual functioning that is severe enough to interfere with the ability of an individual diagnosed with related senile dementia to perform routine activities.

(5) "Division" refers to the division of disability, aging, and rehabilitative services established under IC 12-9-1-1.

(6) "Institutional care" refers to continuous, twenty-four (24) hour residential care provided by facilities such as the following:

(A) Hospitals and nursing facilities.
(B) Intermediate care facilities for the mentally retarded.
(C) Community residential facilities for developmentally disabled.
(D) State owned and operated institutions.

(7) "Respite care services" refers to those services provided temporarily or periodically to an individual diagnosed with Alzheimer's disease or related senile dementia, in the absence of the usual unpaid caregiver, and including services provided

in the home or on an overnight basis in an approved out-of-home setting such as a nursing facility.

(8) "Task force" refers to the Alzheimer's disease and related senile dementia task force established under IC 12-10-5-2.

(Division of Disability and Rehabilitative Services; 460 IAC 1-6-2; filed Aug 17, 1995, 8:30 a.m.: 19 IR 37; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-6-3 Grants

Authority: IC 12-9-2-3; IC 12-10-4-6
Affected: IC 12-10-4-1; IC 12-10-4-5

Sec. 3. (a) The division may make grants available for the following:

(1) Training and development of training materials for individuals listed in IC 12-10-4-1 who participate or assist in the care or treatment of individuals diagnosed with Alzheimer's disease or related senile dementia.

(2) Pilot programs or services, including respite care, adult day care, and other services necessary to prevent premature institutionalization of individuals with Alzheimer's disease and related senile dementia.

(3) Studies or research related to Alzheimer's disease and related senile dementia.

(4) Education or development of educational materials for individuals listed in IC 12-10-4-1 who participate or assist in the care or treatment of individuals diagnosed with Alzheimer's disease or related senile dementia.

(5) Other projects or services necessary to reduce or prevent premature institutionalization of individuals diagnosed with Alzheimer's disease or related senile dementia.

(b) Grants shall be available only to those entities who meet the requirements specified in IC 12-10-4-5(a).

(c) The division shall announce the availability of grant funds. Any announcement shall include, but not be limited to, the following:

(1) The purpose for which the funding is available.

(2) A description of the application process, including deadlines for submission and format for applications.

(3) A requirement for an evaluation of the project or services for which funding is available.

(4) A requirement for a final written report regarding the activities of the project or services for which funding is available.

(d) The division shall select among applicants for grant funds based on the criteria specified in section 4 of this rule. *(Division of Disability and Rehabilitative Services; 460 IAC 1-6-3; filed Aug 17, 1995, 8:30 a.m.: 19 IR 37; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 1-6-4 Selection criteria

Authority: IC 12-9-2-3; IC 12-10-4-6
Affected: IC 12-10-4-5

Sec. 4. Application for grants shall be reviewed and selected based on the following criteria:

(1) Timely submission of all information required in the division's announcement of available grant funds.

(2) Clear definition of the problems or issues to be addressed through the project.

(3) Project or service goals specified in the application.

(4) Statement of specific and measurable objectives directed at reaching the stated goals.

(5) Statement of strategies to be used to meet each objective.

(6) Identification of resources, other than grant funds, including a plan for obtaining other resources for continuation of the project after the grant period, when applicable.

(7) Attention to the needs of underserved groups identified in the application.

(8) Appropriate budget information, using the budget form provided by the division.

(9) Plan for evaluating outcomes of the project.

(10) Letters of support.

(Division of Disability and Rehabilitative Services; 460 IAC 1-6-4; filed Aug 17, 1995, 8:30 a.m.: 19 IR 38; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 1-6-5 Consultation

Authority: IC 12-9-2-3; IC 12-10-4-6
Affected: IC 12-10-4-3

Sec. 5. The division shall consult with the following entities, as necessary, in developing and evaluating activities and services for which grant funds are available under section 3 of this rule:

(1) The division of mental health.

(2) The state department of health.

(3) The task force.

(4) Other organizations knowledgeable about Alzheimer's disease and related senile dementia, or who have an interest in the welfare of individuals with Alzheimer's disease and related senile dementia.

(Division of Disability and Rehabilitative Services; 460 IAC 1-6-5; filed Aug 17, 1995, 8:30 a.m.: 19 IR 38; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

Rule 7. Indiana Long Term Care Ombudsman Program

460 IAC 1-7-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 1. The purpose of this rule is to implement the long term care ombudsman program authorized by IC 12-10-13-17 and 42 U.S.C. 3058g which includes identifying, receiving, investigating, resolving, or attempting to resolve complaints and concerns regarding the health, safety, welfare, or rights of residents. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-1; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1640; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-9-1-1; IC 12-10-3; IC 12-10-13-3.3; IC 16-18-2-167

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Adult protective services program" means the program established under IC 12-10-3.

(c) "Adult protective services unit" means the unit defined in 460 IAC 1-2-2.

(d) "Conflict of interest" means that other interests intrude upon, interfere with, threaten to negate, or give the appearance of interfering with or negating the ability of the state ombudsman, state level staff of the office, local ombudsmen, volunteers, or local ombudsman entities to advocate without compromise on behalf of residents of long term care facilities. It also means any situation that would create a reasonable appearance of a conflict of interest.

(e) "Consult" or "consultations" means to share information with and to keep apprised.

(f) "Dedesignation" means revocation of the designation of a representative of the office or a local ombudsman entity by the state ombudsman.

(g) "Division" means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.

(h) "Financial interest" means the following:

(1) Any ownership or investment interest represented by equity, debt, or other financial relationship in a long term care facility, long term care service, or home care organization; or

(2) The right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with an owner or operator of a long term care facility or home care organization.

(i) "Health facility" or "nursing facility" means a facility as defined in IC 16-18-2-167.

(j) "Identifying information" means the name, age, address, social security number, telephone number, name of facility, diagnosis, physical disability, or any other information that may be used to identify the individual or individuals to whom the complaint refers, or the individual or individuals making the complaint.

(k) "Immediate family member" means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild.

(l) "Legal representative" has the meaning specified in IC 12-10-13-3.3.

(m) "Local ombudsman" means an individual designated by the state ombudsman under section 8 of this rule.

(n) "Local ombudsman entity" means an entity designated by the state ombudsman under section 5 of this rule as the entity to house the local ombudsman.

(o) "Long term care facility" or "facility" means a health facility or an adult care home.

(p) "Office" means office of the state long term care ombudsman established under IC 12-10-13.

(q) "Officer" means the president, vice-president, chairperson, director, executive director, or chief executive officer of an agency or entity.

(r) "Person" means an association, a corporation, a limited liability company, an individual, a governmental agency, or a partnership.

(s) "Program" means the long term care ombudsman program authorized under IC 12-10-13 and 42 U.S.C. 3058g.

(t) "Program records" means the following:

(1) The medical, financial, and social records of residents or clients obtained for the purpose of identifying, investigating, or attempting to resolve a complaint or concern by or on behalf of residents or clients.

(2) Records obtained which are necessary for the investigation of a complaint by or on behalf of residents or clients.

(3) Administrative records, policies, and documents of long term care facilities and home care service organizations obtained during the process of investigating or attempting to resolve a complaint or concern.

(4) Any data relating to complaints and conditions in long term care facilities or home care organizations.

(5) Any other records compiled and maintained by representatives of the office in carrying out their duties pursuant to this rule.

(u) "Representative of the office" means the state ombudsman, other state level ombudsman staff, local ombudsmen, or volunteer ombudsmen.

(v) "Resident" means the resident of a long term care facility.

(w) "State long term care ombudsman" or "state ombudsman" means an individual appointed by the director of the division.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-2; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1640; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-3 Appointment of the state long term care ombudsman; qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13-8; IC 12-10-13-10

Sec. 3. (a) The director of the division shall appoint an individual as state long term care ombudsman to direct the office on a full-time basis.

(b) An individual appointed as state ombudsman shall have the following qualifications:

(1) A bachelor's degree.

(2) Experience in the field of gerontology or long term care. An individual has experience in the field of gerontology if he or she has at least one (1) year working experience in a setting or in an agency, public or private, that provides directly or arranges for the provision of services to older individuals.

(3) Knowledge of laws and regulations pertaining to long term care, including Title XVIII and Title XIX of the Social Security Act and the legal system serving older adults, persons with disabilities, and low-income individuals.

(4) Experience with dispute resolution techniques, including, but not limited to, investigation, mediation, and negotiation. This requirement is satisfied if the individual has had training in dispute resolution techniques.

(5) Expertise and familiarity in the fields of long term care and advocacy. This requirement is satisfied if the individual has at least one (1) year working experience in an agency, public or private, that represents the interests or rights of vulnerable individuals.

(6) No conflict of interest as required by this rule.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-3; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1641; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-4 Duties of the state ombudsman; independence

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-1-3; IC 12-10-1-4; IC 12-10-13

Sec. 4. (a) The state ombudsman shall, in consultation with the director of the state unit on aging, direct the office of the long term care ombudsman program.

(b) The state ombudsman shall, personally or through representatives of the office, perform the following duties:

(1) Identify, investigate, resolve, or attempt to resolve complaints by or on behalf of residents and clients.

(2) Provide services to protect the health, safety, welfare, and rights of residents, including, but not limited to:

(A) Information and referral services.

(B) Education and training for residents, their family members, staff of long term care facilities, and the public. These services may be provided by dissemination of written information, presentations, workshops, individual meetings with residents or their family members, or any other appropriate means.

(3) Inform residents, family members, long term care facility staff, and the public about ombudsman program services, how residents can access those services, or how services can be accessed on behalf of residents.

(4) Inform residents about the means of obtaining services provided through providers of long term care services or their representatives, public agencies, and health and social service agencies.

(5) Ensure that residents statewide have regular and timely access to representatives of the office through resident visits.

(6) Ensure that complainants, clients, and residents receive timely responses to complaints and requests for assistance.

(7) Advocate on behalf of residents in the following nonexclusive ways:

(A) Identify problems affecting residents at the facility, local, state, or national levels and attempt to resolve those problems.

(B) Identify problems in the long term care system and advocate for changes to that system.

(C) Represent the interests of residents before governmental agencies.

(D) Analyze, comment on, provide public testimony, and monitor the development and implementation of proposed or existing federal, state, and local laws, regulations, government policies, and actions that affect residents.

(E) Facilitate public comment.

(8) Seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.

(9) Designate and dedesignate local ombudsman entities and representatives of the office in accordance with this rule.

(10) Consult in the development of the contract between the division and the local ombudsman entity regarding that portion of any contract related to the ombudsman program.

(11) Direct the program related activities of the local ombudsmen in consultation with the local ombudsman entity. The state ombudsman shall, in consultation with the local ombudsman entity, provide oversight to the work of the local ombudsmen.

(12) Provide administrative and technical assistance to representatives of the office and local ombudsman entities.

(13) Monitor and evaluate the activities and performance of representatives of the office and local ombudsman entities in accordance with this rule.

(14) Consult with the following agencies or programs:

(A) The Indiana state department of health.

(B) The adult protective services program.

(C) The Indiana protection and advocacy services.

(D) Other state agencies and programs whose duties and services affect residents.

(15) Provide technical support for the development and maintenance of resident and family councils.

(16) Promote the development of citizen organizations to participate in the program.

(17) Prepare an annual report in accordance with the Older Americans Act.

(18) Ensure that the confidentiality of program records is maintained in accordance with this rule.

(19) Identify duties to be performed by volunteer ombudsmen in consultation with the local ombudsman, local ombudsman entity, and the division.

(20) Perform other duties the federal commissioner on aging determines to be appropriate.

(c) The state ombudsman shall report directly to the director of the state unit on aging. The state ombudsman shall be independent in all actions, but shall consult with the director of the state unit on aging or his or her designee to ensure identification and resolution of agency-wide issues, programmatic and fiscal integrity, and coordination of efforts. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-4; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1642; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-5 Local ombudsman entity; designation; term; dedesignation; notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13-4.5; IC 12-10-13-13

Sec. 5. (a) The state ombudsman may designate local ombudsman entities to carry out the duties specified in section 6 of this rule. The state ombudsman shall consult with the division in the selection of a local ombudsman entity.

(b) An entity applying for designation must:

(1) be a public or private nonprofit entity;

(2) have demonstrated capability to carry out duties of the ombudsman program, such as experience in advocating for the individual and collective rights of vulnerable individuals; and

(3) be free of conflicts of interest as required by this rule.

(c) An entity shall be designated for a period not to exceed two (2) years.

(d) The state ombudsman may dedesignate a local ombudsman entity at any time, for cause, which may include, but is not limited to, the following:

(1) Failure to satisfactorily perform the duties of the entity as specified in section 6 of this rule.

(2) Failure to report or correct a conflict of interest.

(3) Violation of confidentiality provisions required under state or federal statutes or regulations, this rule, or office policy.

(e) The state ombudsman shall give written notice of the dedesignation to the local ombudsman entity. The notice shall include:

(1) reasons for the dedesignation;

(2) effective date of the dedesignation; and

(3) appeal rights.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-5; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-6 Responsibilities of local ombudsman entity

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 6. The local ombudsman entity shall:

(1) assure continual ombudsman coverage by a designated and certified ombudsman;

(2) remain free of conflicts of interest as defined in this rule;

(3) provide nonombudsman program related supervision, i.e., attendance, appropriate office behavior, etc.;

(4) provide space, phone, computer access, utilities, supplies, postage, mail service, and other program support;

(5) inform the office prior to dismissal of a local ombudsman for reasons unrelated to the duties of the office;

(6) adhere to all the state and federal laws, regulations, and rules governing the Indiana long term care ombudsman program;

(7) not give the local ombudsman other job assignments that conflict with ombudsman responsibilities; and

(8) provide confidentiality to the state ombudsman, to the local ombudsman, to the office, to residents, to families, and to anyone filing a complaint on behalf of a resident.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-6; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-7 Responsibilities of state ombudsman as to local ombudsman entity

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 7. The state ombudsman shall:

(1) provide programmatic direction, instruction, guidance, and assistance to the local ombudsman entity;

(2) assess the local ombudsman entity;

(3) assess the local ombudsman's performance in consultation with the local ombudsman entity; and

(4) involve the local ombudsman entity in program planning and policy development.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-7; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643; readopted filed Nov

21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-8 Local ombudsman; designation; exemption; certification; dedesignation; notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13-4.5; IC 12-10-13-13

Sec. 8. (a) The state ombudsman may designate a local ombudsman as representative of the office to carry out the duties specified in section 9 of this rule. If the local ombudsman is housed in a local ombudsman entity, the state ombudsman shall consult with the local ombudsman entity in the designation process.

(b) In order to be designated as a local ombudsman, an individual shall meet the following criteria:

(1) Have a bachelor's degree in counseling, gerontology, nursing, psychology, sociology, social work, physical, occupational, or recreational therapy, special education, rehabilitation counseling, or other human services field or have at least four (4) years work experience in the field of long term care. Accredited college training in the areas listed above may substitute for the required work experience on a year-for-year basis.

(2) Successfully complete the Indiana long term care ombudsman program training and certification program.

(3) Be free of conflicts of interest as required by this rule.

(c) An individual serving as local ombudsman before the effective date of this rule shall be exempt from the requirements in this section except those referring to conflicts of interest.

(d) Each local ombudsmen *[sic., ombudsman]* designated in accordance with subsection (a) shall be certified by the state ombudsman to perform the duties in section 9 of this rule for a period not to exceed two (2) years.

(e) In order to be recertified, a local ombudsman shall:

(1) satisfactorily perform the duties specified in section 9 of this rule;

(2) remain free of conflicts of interest as required by this rule; and

(3) satisfactorily meet any additional requirements specified by law or regulation.

(f) The state ombudsman may, at any time, dedesignate a local ombudsman for cause. If the local ombudsman is housed in a local ombudsman entity, the state ombudsman shall consult with the local ombudsman entity in the dedesignation process. Cause for dedesignation includes, but is not limited to, the following:

(1) Failure of the local ombudsman to follow state and federal laws, regulations, and this rule.

(2) Failure to satisfactorily perform the duties specified in section 9 of this rule.

(3) Failure to follow the direction and supervision of the state ombudsman or appropriate state level office staff.

(4) Taking any action which endangers the health, safety, welfare, or rights of residents or clients.

(5) Failure to disclose or correct a conflict of interest.

(g) The state ombudsman shall give written notice of the dedesignation to the local ombudsman. The notice shall include:

(1) reasons for the dedesignation;

(2) effective date of the dedesignation; and

(3) appeal rights.

(h) The state ombudsman must inform the local ombudsman entity of the decision not to recertify or to dedesignate a local ombudsman prior to issuing the written notice to the local ombudsman. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-8; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-9 Duties of the local ombudsman

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 9. The local ombudsman shall perform the following duties:

(1) Identify, investigate, resolve, or attempt to resolve complaints made by or on behalf of residents that relate to actions, inactions, or decisions that may adversely affect the health, safety, welfare, or rights of residents. The local ombudsman shall inform the complainant, the resident, or their legal representatives of the findings of an investigation or the reasons why a complaint cannot be investigated.

(2) Provide services to protect the health, safety, welfare, and rights of long term care facility residents, including, but is not limited to:

(A) information and referral services; and

(B) education and training for residents, their family members, staff of long term care facilities, and the public.

(3) Provide residents regular and timely access to the program through frequent resident visits.

(4) Respond to complaints and requests for assistance.

(5) Support the development and maintenance of resident and family councils and assist in addressing council concerns.

(6) Inform residents, their family members, citizens' organizations, the public, and long term care facility staff about the ombudsman program.

(7) Advocate on behalf of residents in the following nonexclusive ways:

(A) Identify problems affecting residents at the facility, local, state, or national levels and attempt to resolve those problems.

(B) Identify problems in the long term care system and advocate for changes to that system.

(C) Represent the interests of residents before government agencies, legislative committees, individual legislators, and other individuals, groups, or entities where issues that affect residents are addressed.

(D) Communicate directly with legislators, policy makers, and the media about issues affecting residents and other consumers of long term care.

(E) Analyze, comment on, provide public testimony, and monitor the development and implementation of proposed or existing federal, state, and local laws, regulations, government policies, and actions that affect residents.

(F) Facilitate public comment.

(G) Provide information regarding the problems and concerns of residents and recommendations for resolving those problems and concerns to:

(i) public agencies;

(ii) private entities; and

(iii) state and federal legislators.

(H) Take any other action relating to the ombudsman program determined to be appropriate by the state ombudsman.

(8) Pursue administrative, legal, and other remedies on behalf of residents.

(9) In accordance with federal and state laws and regulations, share information related to long term care facilities with the Indiana state department of health.

(10) Whenever possible, participate in surveys of long term care facilities conducted by the Indiana state department of health.

(11) Document and report activities as required by the office.

(12) Accept the direction, instruction, guidance, and assistance of the state ombudsman, in consultation with the local ombudsman entity, in all program activities.

(13) Follow federal and state laws and these rules.

(14) Carry out other program-related activities that the state ombudsman determines to be appropriate.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-9; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1644; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-10 Volunteer ombudsman; designation; certification; dedesignation

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-4.5

Sec. 10. (a) The state ombudsman may designate a volunteer ombudsman to perform specific office duties.

(b) To be designated as a volunteer ombudsman, an individual shall:

(1) successfully complete the Indiana long term care volunteer ombudsman program training; and

(2) be free of conflicts of interest as required by this rule.

(c) Each volunteer ombudsman designated in accordance with subsection (a) must be certified for a period not to exceed two (2) years.

(d) The local ombudsman shall assess each volunteer ombudsman at least every two (2) years and make a recommendation regarding recertification to the state ombudsman. In order to be recertified, the volunteer ombudsman shall:

(1) satisfactorily perform the duties of the position;

(2) remain free of conflicts of interest as required by this rule; and

(3) meet any additional requirements specified by law or regulation.

(e) The state ombudsman, in coordination with the local ombudsman, may dedesignate a volunteer ombudsman for cause, including, but not limited to, the following:

(1) Failure of the volunteer ombudsman to follow the direction and supervision of the state or local ombudsman.

(2) Acting outside the area of responsibility.

(3) Taking any action which endangers the health, safety, welfare, or rights of residents.

(4) Failure to disclose or correct a conflict of interest.

(5) Failure to satisfactorily perform the duties of a volunteer ombudsman.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-10; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-11 Conflict of interest; state ombudsman and state level office staff

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 11. Any individual who has the following conflicts of interest, or any individual who has an immediate family member with these conflicts of interest, shall not be appointed as state ombudsman or to the staff of the state office:

(1) Having a financial interest in a long term care facility or a long term care service within three (3) years before the date of appointment.

(2) Employment in a long term care facility within one (1) year before the date of appointment.

(3) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(4) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(5) Current membership in a trade association of long term care facilities.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-11; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-12 Conflict of interest; board members, officers, and employees of local ombudsman entities

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 12. (a) Board members of the local ombudsman entity who are not free from conflicts of interest shall not participate in any discussion or vote on any matters pertaining to the program, and such recusal shall be made a part of the minutes or other official record of the local entity's board of directors or other comparable governing body. Such conflicts of interest include the following:

(1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(3) A current financial interest in a long term care facility or a long term care service.

(4) Current membership in a trade association of long term care facilities.

(b) In order to receive and maintain designation or to be redesignated as a local ombudsman entity, officers of those entities seeking to be designated or redesignated as local ombudsman entities shall be free from conflicts of interest, which include the following:

(1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(3) A current financial interest in a long term care facility or a long term care service.

(4) Current membership in a trade association of long term care facilities.

(c) In order to receive designation, or redesignation, as a local ombudsman entity, employees of those entities who supervise a local ombudsman shall be free from conflicts of interest, which include the following:

(1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(3) A current financial interest in a long term care facility or a long term care service.

(4) Current membership in a trade association of long term care facilities.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-12; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-13 Conflict of interest; local ombudsman and volunteer ombudsman; family members

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 13. (a) In order to receive designation or certification, or to avoid dedesignation, as a local ombudsman or a volunteer ombudsman, an individual shall be free from conflicts of interest, which include the following:

(1) A financial interest in a long term care facility or a long term care service within three (3) years before the date of designation.

(2) Acting as local ombudsman or volunteer ombudsman in a long term care facility in which the individual was employed within one (1) year before the date of designation.

(3) Current direct involvement in the licensing or certification of a long term care facility or a provider of long term care service.

(4) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(5) Current membership in a trade association of long term care facilities.

(6) Currently serving as an officer of a local ombudsman entity.

(7) Currently serving as a supervisor of other programs that may come in conflict with the duties of the ombudsman program.

(8) Currently performing duties or providing services other than those required in this rule that are in conflict with, or that may create a conflict with, the duties required in this rule.

(9) Currently serving as:

(A) a resident's agent;

(B) a resident's legal representative;

(C) the sole witness for do not resuscitate orders or other medical directives; or

(D) a member of a long term care facility's ethics committee which makes medical decisions for residents.

(b) A family member who serves as a resident who is their family member's agent or legal representative shall not be regarded as having a conflict of interest.

(c) In order to receive designation or certification, or to avoid dedesignation, as a local ombudsman or a volunteer ombudsman, an individual's immediate family members shall be free from conflicts of interest, which include the following:

(1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(2) Current participation through direct employment or contractual arrangement in the management of a long term care facility in the volunteer ombudsman's or local ombudsman's service area.

(3) A current financial interest in a long term care facility or a long term care service.

(4) Current membership in a trade association of long term care facilities.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-13; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1646; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-14 Ombudsman program records; confidentiality; access; disclosure of identity of complainant or resident

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-16.4; IC 12-10-13-16.8

Sec. 14. (a) All program records developed or maintained by the local ombudsman or volunteer ombudsman in the course of work for the office become the property of the office.

(b) All program records shall be kept confidential and released only pursuant to state law and this rule.

(c) Ombudsman program records shall be maintained in secure files to ensure confidentiality. Measures shall be implemented by the division and the local ombudsman entity to ensure confidentiality to the local ombudsman, state ombudsman, and the state level staff of the office with respect to the receipt of complaints by mail, fax, telephone, or personal interview, which measures shall

include means for the delivery of mail, addressed to representatives of the office by name or title, unopened.

(d) Access to program records shall be limited to the following, and to them only for purposes associated with their official duties:

(1) The state ombudsman.

(2) The state level staff of the office.

(3) The local ombudsman.

(e) The state ombudsman, the state level staff of the office, the local ombudsman, and the volunteer ombudsman shall not disclose the identity of a complainant or resident, except:

(1) with the written consent of the resident or complainant or his or her legal representative;

(2) with the oral consent of the resident or complainant or his or her legal representative, and the consent is documented contemporaneously on a form prescribed or approved by the office; or

(3) the disclosure is required by court order.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-14; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1646; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-15 Access to facilities and facilities' records

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 5-14-3-8; IC 12-10-13-16.2; IC 12-10-13-16.5

Sec. 15. (a) Representatives of the office shall have access to long term care facilities at all times.

(b) Representatives of the office shall have access to those records of a long term care facility that residents or the general public have access to as a matter of law, or to records or documentation when such records or documentation are *[sic., is]* relevant to a complaint or an investigation and disclosure is not prohibited by state or federal laws or regulations governing the confidentiality of such records or documentation. Records and documentation of a long term care facility are relevant if they relate to or address the subject matter of the complaint or investigation.

(c) Representatives of the office shall be permitted to make or obtain copies of these records. A long term care facility may charge for the copies at a rate not to exceed the rate specified by state law.

(d) Representatives of the office shall have access to a resident's medical, financial, and social records as provided under IC 12-10-13. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-15; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-16 Access to agency records

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13-16.6

Sec. 16. (a) Representatives of the office shall have access to records of a state or local government agency that are relevant to a complaint or investigation, except as prohibited by state or federal law or regulation. For purposes of this section, the term "relevant records" refers to those records that address the subject matter of a complaint, or investigation, or that pertain to a long term care facility that is involved in a complaint, or that is the subject of an investigation.

(b) If the records pertain to a particular resident, the representative of the office shall obtain consent to access the records in accordance with state law. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-16; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-17 Legal counsel

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 17. (a) State and local ombudsmen shall have access to legal counsel that is able, without conflict of interest, to provide advice and consultation necessary to:

(1) protect the health, safety, welfare, and rights of residents of long term care facilities; and

(2) assist the state and local ombudsmen in the performance of their official duties.

(b) The division shall be responsible for arranging for legal representation of state and local ombudsmen against whom legal action is brought or threatened to be brought in connection with the performance of the official duties of the ombudsmen. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-17; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-18 Monitoring

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 18. (a) The state ombudsman shall monitor and assess the performance of the local ombudsman entity and the local ombudsman to ensure compliance with all applicable laws and regulations governing the program and this rule. Monitoring shall include, but shall not be limited to, a review of local ombudsman case records. The state ombudsman and the state level staff of the office shall have access to all necessary records containing the identity or identifying information of residents or complainants in order to conduct the monitoring and assessment. Monitoring and assessment shall be conducted by the state ombudsman and the state level staff office as follows:

(1) The local ombudsman entity shall be responsible for monitoring and assessing administrative compliance using a tool developed by the state ombudsman.

(2) The state ombudsman and the state level staff of the office shall be responsible for assessment of the performance of program duties and for case record monitoring and assessment in order to maintain the confidentiality of program files.

(3) The results of the administrative monitoring and assessment and the case record monitoring and assessment shall be shared among the state ombudsman, the local ombudsman, and the local ombudsman entity.

(b) The results of the monitoring and assessment shall be considered a factor by the state ombudsman in determining whether to redesignate the local ombudsman entity and recertify the local ombudsman. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-18; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-19 Noninterference

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 19. (a) A person shall not exert inappropriate or improper influence on a representative of the office or take any action which will in any way compromise, delay, or limit:

(1) the investigation or outcome of complaints;

(2) the representative's role as advocate for the rights and interests of residents;

(3) the representative's attempt to resolve issues related to the rights, quality of care, and quality of life of the residents; or

(4) the representative's responsibility to provide information or recommendations regarding problems and concerns of residents or clients, as necessary, to public and private agencies, legislators, or other persons.

(b) Any interference with the duties of a representative of the office by an officer or employee of the division or an officer or employee of the local ombudsman entity shall be deemed a breach of the duties of the division or local ombudsman entity, as specified in this rule. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-19; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

460 IAC 1-7-20 Violations

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13-20

Sec. 20. A person who takes any of the following actions commits a Class B misdemeanor:

(1) Intentionally prevents the work of the office.

(2) Knowingly offers compensation to the office in an effort to affect the outcome of an investigation or a potential investigation.

(3) Retaliates against a resident, a client, an employee, or another person who files a complaint or provides information to the office.

(Division of Disability and Rehabilitative Services; 460 IAC 1-7-20; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)

460 IAC 1-7-21 Administrative reconsideration; appeals

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 4-21.5

Sec. 21. (a) A local ombudsman entity that is dedesignated or that is not redesignated may request a reconsideration of the decision to the state ombudsman. The state ombudsman shall provide a response to the request for reconsideration within fifteen (15) days from the date the request is received, including a notice of the right to appeal the decision. A local ombudsman entity that is dissatisfied with the decision on reconsideration may appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5.

(b) A local ombudsman who is dedesignated or who is not redesignated may, in coordination with the local ombudsman entity or independently, seek reconsideration from the state ombudsman. The state ombudsman shall provide a response to the request within fifteen (15) days of the date the request is received, including a notice of the right to appeal the decision. A local ombudsman who is dissatisfied with the decision may, in coordination with the local ombudsman entity or independently, appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5. *(Division of Disability and Rehabilitative Services; 460 IAC 1-7-21; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648; readopted filed Nov 21, 2006, 11:00 a.m.: 20061213-IR-460060411RFA)*

Rule 8. Personal Services Attendant for Individuals in Need of Self-Directed In-Home Care

460 IAC 1-8-1 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-20
Affected: IC 12-10-10; IC 12-10-17.1; IC 12-15-34-1; IC 16-25; IC 25-1-9-2; IC 25-1-9-3

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Ancillary services" means services ancillary to the basic services provided to an individual in need of self-directed in-home care who needs at least one (1) of the basic services listed in subsection (d). The term includes the following:

(1) Homemaker type services, including shopping, laundry, cleaning, and seasonal chores.

(2) Companion type services, including transportation, letter writing, mail reading, and escort services.

(3) Assistance with cognitive tasks, including managing finances, planning activities, and making decisions.

(c) "Attendant care services" means those basic and ancillary services, which the individual chooses to direct and supervise a personal services attendant to perform, that enable an individual in need of self-directed in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

(d) "Basic services" means a function that could be performed by the individual in need of self-directed in-home care if the individual were not physically disabled. The term includes the following:

(1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.

(2) Assistance with routine bodily functions, including:

(A) health related services as defined in subsection (f);

(B) bathing and personal hygiene;

(C) dressing and grooming; and

(D) feeding, including preparation and cleanup.

(e) "Geographic area" means one (1) county of the state.

(f) "Health related services" means those medical activities that, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, could be performed by the individual if the individual were physically capable, and if the medical activities can be safely performed in the home, and either:

(1) are performed by a person who has been trained or instructed on the performance of the medical activities by an individual in need of self-directed in-home care who is, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, capable of training or instructing the person who will perform the medical activities; or

(2) are performed by a person who has received training or instruction from a licensed health professional, within the

professional's scope of practice, in how to properly perform the medical activity for the individual in need of self-directed in-home care.

(g) "Individual in need of self-directed in-home care" means an individual with a disability, or person responsible for making health related decisions for the individual with a disability, who:

(1) is approved to receive Medicaid waiver services under 42 U.S.C. 1396n(c), or is a participant in the community and home options to institutional care for the elderly and disabled program under IC 12-10-10;

(2) is in need of attendant care services because of impairment;

(3) requires assistance to complete functions of daily living, self-care, and mobility, including those functions included in attendant care services;

(4) chooses to self-direct a paid personal services attendant to perform attendant care services; and

(5) assumes the responsibility to initiate self-directed in-home care and exercise judgment regarding the manner in which those services are delivered, including the decision to employ, train, and dismiss a personal services attendant.

(h) "Licensed health professional" means the following:

(1) A registered nurse.

(2) A licensed practical nurse.

(3) A physician with an unlimited license to practice medicine or osteopathic medicine.

(4) A licensed dentist.

(5) A licensed chiropractor.

(6) A licensed optometrist.

(7) A licensed pharmacist.

(8) A licensed physical therapist.

(9) A certified occupational therapist.

(10) A certified psychologist.

(11) A licensed podiatrist.

(12) A licensed speech-language pathologist or audiologist.

(i) "Personal services attendant" means an individual who is registered to provide attendant care services under this rule and who has entered into a contract with an individual and acts under the individual's direction to provide attendant care services that could be performed by the individual if the individual were physically capable.

(j) "Self-directed in-home health care" means the process by which an individual, who is prevented by a disability from performing basic and ancillary services that the individual would perform if not disabled, chooses to direct and supervise a paid personal services attendant to perform those services in order for the individual to live in the individual's home and community rather than an institution. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-1; filed Oct 2, 2002, 9:13 a.m.: 26 IR 350; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

460 IAC 1-8-2 Exclusions from rule

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-20
Affected: IC 12-15-34-1; IC 16-25; IC 25-1-9-2; IC 25-1-9-3

Sec. 2. This rule does not apply to the following:

(1) An individual who provides attendant care services and who is employed by and under the direct control of a home health agency (as defined in IC 12-15-34-1).

(2) An individual who provides attendant care services and who is employed by and under the direct control of a licensed hospice program under IC 16-25.

(3) An individual who provides attendant care services and who is employed by and under the control of an employer that is not the individual who is receiving the services.

(4) A practitioner (as defined in IC 25-1-9-2) who is practicing under the scope of the practitioner's license (as defined in IC 25-1-9-3).

(Division of Disability and Rehabilitative Services; 460 IAC 1-8-2; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)

460 IAC 1-8-3 Attendant care service provider registration requirement; preclusion

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-16
Affected: IC 12-10-10; IC 12-10-17.1; IC 12-15

Sec. 3. (a) An individual desiring to provide attendant care services must register with the division.

(b) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an individual in need of self-directed in-home care services unless the individual seeking to provide attendant care services is registered with the division.

(c) An individual who is a legal guardian of an individual in need of self-directed in-home care, including a parent of a minor individual and a spouse, is precluded from providing attendant care services for that individual for compensation under this section.

(d) An individual may not provide personal attendant services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program if they have been convicted of a crime or offense involving abuse, neglect, or exploitation of an individual. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-3; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351; filed May 9, 2005, 1:50 p.m.: 28 IR 2690; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

460 IAC 1-8-4 Requirements to become registered as attendant care service provider; certificate

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-20
Affected: IC 12-10-17.1; IC 16-28-13

Sec. 4. (a) In order to be registered with the division, an individual must submit the following:

(1) A personal résumé containing information concerning the individual's qualifications, work experience, and any credentials the individual may hold. The individual must certify that the information contained in the résumé is true and accurate.

(2) The individual's limited criminal history check from the Indiana central repository for criminal history information under IC 5-2-5 *[IC 5-2-5 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003.]* or another source allowed by law.

(3) If applicable, the individual's state nurse aide registry report, referred to in IC 16-28-13, from the state department of health. This subdivision does not require an individual to be a nurse aide.

(4) Three (3) letters of reference.

(5) A registration fee of zero dollars ($0).

(6) Proof that the individual is at least eighteen (18) years of age.

(7) Any other information required by the division.

(b) Subject to section 9(c) of this rule, if the requirements of subsection (a) are satisfactorily met, the division shall issue a certificate of registration for the period required under IC 12-10-17 *[IC 12-10-17 was repealed by P.L.141-2006, SECTION 115, effective July 1, 2006.]*, effective on the date that the certificate of registration is issued. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-4; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

460 IAC 1-8-5 File maintained by division

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-20
Affected: IC 12-10-17.1

Sec. 5. The division shall maintain a file for each personal services attendant that contains the following:

(1) Comments related to the provision of attendant care services, including periodic reports on the quality of services provided by the personal services attendant, submitted by an individual in need of self-directed in-home care who has employed the personal services attendant; and

(2) The items described in section 4(a)(1) through 4(a)(4) of this rule.

(Division of Disability and Rehabilitative Services; 460 IAC 1-8-5; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)

460 IAC 1-8-6 Renewal of registration

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-20
Affected: IC 12-10-17.1

Sec. 6. (a) A personal services attendant may renew the personal services attendant's registration by doing the following:

(1) Updating any information in the file described in section 5 of this rule that has changed; and

(2) Paying the fee required under section 4(a)(5) of this rule.

(b) The limited criminal history check required under section 4(a)(2) of this rule and the nurse aide registry report described in section 4(a)(3) of this rule must be updated every two (2) years. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-6; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

460 IAC 1-8-7 Information available from division

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-20
Affected: IC 5-14-3; IC 12-10-17.1

Sec. 7. Upon request, an individual in need of self-directed in-home care shall receive from the division the following:

(1) Without charge, a list of personal services attendants who are registered with the division and available within the geographic area requested.

(2) A copy of the information of a specified personal services attendant who is on file with the division under section 5 of this rule. The division may charge a fee in accordance with IC 5-14-3, not to exceed five dollars ($5), for shipping, handling, and copying expenses.

(Division of Disability and Rehabilitative Services; 460 IAC 1-8-7; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)

460 IAC 1-8-8 Contract required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-20
Affected: IC 12-10-17.1-17

Sec. 8. The individual in need of self-directed in-home care and the personal services attendant must each sign a contract, in a form approved by the division, that includes, at a minimum, the following:

(1) The responsibilities of the personal services attendant.

(2) The frequency the personal services attendant will provide attendant care services.

(3) The duration of the contract.

(4) The hourly wage of the personal services attendant. The wage may not be less than the federal minimum wage or more than the rate that the recipient is eligible to receive under a Medicaid home and community based services waiver or the community and home options to institutional care for the elderly and disabled program for attendant care services.

(5) Reasons and notice agreements for early termination of the contract.

(Division of Disability and Rehabilitative Services; 460 IAC 1-8-8; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)

460 IAC 1-8-9 Appeals and review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-21
Affected: IC 4-21.5-3; IC 4-21.5-5

Sec. 9. (a) The division, through designated representatives, shall investigate complaints by or on behalf of an individual in need of self-directed in-home care concerning the neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care by a personal services attendant.

(b) The division shall make a determination as to whether or not a personal services attendant neglected, abused or misappropriated the property of an individual in need of self-directed in-home care by a personal services attendant. The finding shall be entered into the personal services attendant's file with the division. The division shall give the personal services attendant notice of its determination.

(c) If the division determines that a personal services attendant neglected, abused, or misappropriated the property of an individual in need of self-directed care, the division may remove the personal services attendant from the list of registered personal services attendants and revoke or deny the certificate of registration.

(d) If the division determines that a personal services attendant neglected, abused, or misappropriated the property of an

individual in need of self-directed care, the division shall give written notice to the personal services attendant of the procedures and time limit for seeking administrative review of the division's determination pursuant to this section.

(e) A personal services attendant found by representatives of the division to have committed neglect, abuse, mistreatment or misappropriation of property of an individual in need of self-directed in-home care and who disagrees with the decision may petition for administrative review of the decision. The petition must be in writing, show that the petitioner was directly affected by the decision, and contain the specific issues for review and the rationale for the petitioner's position. The petition must be filed within fifteen (15) days after the petitioner is given notice of the decision. The petition must be filed with the director of the division.

(f) Upon receiving timely notice of an appeal, the director or the director's designee shall appoint an administrative law judge to conduct the proceedings on review. The proceedings shall be conducted in accordance with IC 4-21.5-3.

(g) Upon exhaustion of the administrative remedies in subsections (c) and (d), a personal services attendant who is dissatisfied with the outcome may file a petition for judicial review pursuant to IC 4-21.5-5. The petition must be filed in a court of competent jurisdiction within thirty (30) days after receiving notice of the final agency decision. The petition must be served upon the director of the division, the attorney general, and any other party to the agency proceeding. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-9; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

460 IAC 1-8-10 Nurse aide registry

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-21
Affected: IC 16-28-13

Sec. 10. At the conclusion of all appeals taken, or if no appeal is taken, upon determination by the division of the merits of a complaint, a personal services attendant found to have committed neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care shall be placed on the state nurse aide registry referred to in IC 16-28-13. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-10; filed Oct 2, 2002, 9:13 a.m.: 26 IR 353; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

460 IAC 1-8-11 Method of payment to a personal services attendant

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-16
Affected: IC 12-10-10; IC 12-10-17.1

Sec. 11. (a) For purposes of this rule, "fiscal agent" means an entity that is utilized by the person in need of self-directed in-home care to handle the payroll responsibilities related to the agreement between the person in need of self-directed in-home care and the personal services attendant.

(b) An individual in need of self-directed in-home care who has hired a personal services attendant who is registered with the division shall utilize a fiscal agent that must be authorized by the division of disability, aging, and rehabilitative services.

(c) The fiscal agent shall provide payroll and bookkeeping services following federal, state, and local regulations, including, but not limited to, the following:

(1) Assisting the individual in completing and submitting applications for the following:
    (A) State and federal employment tax identification numbers.
    (B) Unemployment insurance.
    (C) Worker's compensation insurance.
(2) Processing the following:
    (A) Payroll, including income tax withholdings.
    (B) Social Security deductions under the Federal Insurance Contributions Act (FICA).
    (C) Worker's compensation.
    (D) Wages.
(3) Disbursing checks to the personal services attendant.
(4) Preparing employer tax forms, including W-4 forms.
(5) Supplying appropriate paperwork to be used by the individual in need of self-directed in-home care to document and monitor time worked by the personal services attendant.

(d) Payroll records must certify the following:

(1) The personal services attendant worked the hours as recorded.

(2) The individual in need of self-directed in-home services received the services as recorded and the services were within the limits of the authorized care plan.

(Division of Disability and Rehabilitative Services; 460 IAC 1-8-11; filed May 9, 2005, 1:50 p.m.: 28 IR 2691; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)

460 IAC 1-8-12 Method of payment to a fiscal agent

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-16
Affected: IC 12-10-10; IC 12-10-17.1

Sec. 12. The fiscal agent shall be paid in accordance with the terms of the agreement with the division. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-12; filed May 9, 2005, 1:50 p.m.: 28 IR 2691; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

460 IAC 1-8-13 Record keeping requirements

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17.1-16
Affected: IC 12-10-10; IC 12-10-17.1

Sec. 13. The fiscal agent shall maintain records for personal attendant services in accordance with the terms of the agreement with the division. *(Division of Disability and Rehabilitative Services; 460 IAC 1-8-13; filed May 9, 2005, 1:50 p.m.: 28 IR 2691; readopted filed Oct 17, 2008, 3:35 p.m.: 20081105-IR-460080685RFA)*

Rule 9. (Reserved)

Rule 10. Caretaker Support Program

460 IAC 1-10-1 Scope and applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 1. (a) This rule sets forth provisions governing the administration and coordination of the caretaker support program.

(b) This rule applies to the following:

(1) The bureau of aging and in-home services.

(2) Area agencies on aging.

(3) Service providers under contract with an area agency on aging to provide services under this program.

(4) Caretakers and care receivers who receive benefits of this program.

(Division of Disability and Rehabilitative Services; 460 IAC 1-10-1; filed Oct 18, 2004, 2:45 p.m.: 28 IR 910)

460 IAC 1-10-2 Funding source; services provided

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 2. (a) Both federal and state funding may be used for this program. Since federal and state statutes applicable to this program differ, the source of funding may determine the services provided and the people to whom those services may be provided.

(b) If state funding is used, caretaker support program services include the following:

(1) Information for caretakers about available services.

(2) Assistance to caretakers in gaining access to the services.

(3) Individual counseling, organization of support groups, and caretaker training to assist caretakers in making decisions and solving problems in the individual's role as caretaker.

(4) Respite care to offer caretakers temporary relief from caretaker responsibilities.

(c) If federal funding is used, caretaker support program services include each of the services in subsection (b)(1) through (b)(4), plus supplemental services provided on a limited basis to complement the care provided by caretakers. *(Division of Disability*

and Rehabilitative Services; 460 IAC 1-10-2; filed Oct 18, 2004, 2:45 p.m.: 28 IR 910)

460 IAC 1-10-3 Program administration; administrative functions and responsibilities of BAIHS

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 3. (a) As funding allows, BAIHS will administer the program under contract with the area agencies on aging.

(b) In administration of the program, the functions and responsibilities of BAIHS include the following:

(1) The review and approval of annual program plans submitted by area agencies on aging.

(2) The allocation to area agencies on aging of funds appropriated for the provision of program services.

(3) The establishment and maintenance of policies and procedures for the operation of the program and the provision of services.

(4) The development and maintenance of fiscal and service data collection and procedures for collecting information on families and services provided.

(5) The monitoring of local programs for compliance with applicable state and federal laws and approved area agency on aging program plans.

(Division of Disability and Rehabilitative Services; 460 IAC 1-10-3; filed Oct 18, 2004, 2:45 p.m.: 28 IR 910)

460 IAC 1-10-4 Program administration; administrative functions and responsibilities of the area agencies on aging

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 4. (a) As funding allows, each area agency on aging shall administer a program under this rule in its planning and service area.

(b) In the administration of the program, the function and responsibilities of the area agency on aging include the following:

(1) The development and submission of a program plan under section 5 of this rule.

(2) The coordination of service development and delivery under this rule with other appropriate agencies and organizations in the community with special efforts to develop and maintain an effective network of local support for caretakers.

(3) The timely collection and submission from area agencies on aging on a quarterly basis to BAIHS that includes information on individuals served, units of service, and expenditures on forms or in the format provided by the BAIHS.

(Division of Disability and Rehabilitative Services; 460 IAC 1-10-4; filed Oct 18, 2004, 2:45 p.m.: 28 IR 911)

460 IAC 1-10-5 Program plans

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 5. Each area agency on aging shall annually submit a plan, as part of its area plan, which includes the following information:

(1) A description of area agency on aging caretaker programs that include strategies for the strengthening or developing of a local network of family caretaker resources. The use of network models that may involve local voluntary groups, faith-based groups, and health care organizations active in the areas of Alzheimer's disease, support groups for family caretakers and grandparents raising grandchildren, and other similar organizations is strongly encouraged.

(2) An explanation of how the area agency on aging will assure that, in providing services, priority shall be given to older individuals with greatest social and economic need, with particular attention to low-income older individuals and older individuals providing care and support to persons with mental retardation and related developmental disabilities. The provision of services may be affected as follows:

(A) If state funding is used, services will be provided to individuals at least sixty-five (65) years of age who are caretakers or who are taking care of individuals with special needs at least eighteen (18) years of age and unable to perform at least three (3) activities of daily living. For respite services, this applies to individuals that are unable to perform at least two (2) activities of daily living.

(B) If federal funding is used, priority will be given to persons at least eighteen (18) years of age who are caretakers of

individuals at least sixty (60) years of age who are unable to perform at least two (2) activities of daily living, and older adults, grandparents, or stepgrandparents at least sixty (60) years of age who are caretakers of children eighteen (18) years of age or younger for respite and supplemental services.

(3) A description of strategies for carrying out caretaker education so that different kinds of caretaker education needs are effectively met. Caretaker education shall involve to the extent possible the participation of available community resources. These efforts may include support groups if appropriate.

(4) A twelve (12) month operating budget on a form provided by BAIHS.

(Division of Disability and Rehabilitative Services; 460 IAC 1-10-5; filed Oct 18, 2004, 2:45 p.m.: 28 IR 911)

460 IAC 1-10-6 Program compliance

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 6. Failure of an area agency on aging to comply with corrective action requirements resulting from compliance monitoring by BAIHS may lead to sanctions imposed by BAIHS when, after discussion, the area agency on aging and the BAIHS are unable to reach a mutually satisfactory resolution of the noncompliance issue. *(Division of Disability and Rehabilitative Services; 460 IAC 1-10-6; filed Oct 18, 2004, 2:45 p.m.: 28 IR 911)*

460 IAC 1-10-7 Cost share

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4
Affected: IC 12-10-1; IC 12-10.5-1

Sec. 7. The client cost share will be calculated based on an application form that may be provided by BAIHS. *(Division of Disability and Rehabilitative Services; 460 IAC 1-10-7; filed Oct 18, 2004, 2:45 p.m.: 28 IR 911)*

Rule 11. Posting of Notices

460 IAC 1-11-1 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-9-1-1; IC 12-10-1-4; IC 12-10-5-2; IC 12-10-15; IC 12-12-8-1

Sec. 1. (a) "Administrator" means the natural person who:

(1) administers;

(2) manages;

(3) supervises; or

(4) is in general administrative charge of;

a housing with services establishment.

(b) "Area agency on aging" or "AAA" means the agency designated by the bureau of aging and in-home services in each planning and service area under IC 12-10-1-4(18).

(c) "Centers for independent living" means a consumer controlled, community based, cross-disability, private nonprofit agency that:

(1) is designed and operated within a local community by individuals with disabilities; and

(2) provides an array of independent living services.

(d) "Director" means the director of the division.

(e) "Division" means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1.

(f) "Housing with services establishment" or "establishment" means a facility providing sleeping accommodations to at least five (5) residents and offering or providing for a fee at least:

(1) one (1) regularly scheduled health related service as defined in IC 12-10-15-2; or

(2) two (2) regularly scheduled supportive services;

whether offered or provided directly by the establishment or by another person arranged for by the establishment.

(g) "Operator" means a person that operates a housing with services establishment.

(h) "Resident" means an individual who has a contract to reside in a housing with services establishment.

(i) "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. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-1; filed May 9, 2005, 1:50 p.m.: 28 IR 2687)*

460 IAC 1-11-2 Requirement to post notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 2. Each housing with services establishment, center for independent living, and area agency on aging shall post a notice that advises residents of a housing with services establishment of their rights under IC 12-10-15. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-2; filed May 9, 2005, 1:50 p.m.: 28 IR 2688)*

460 IAC 1-11-3 Rights to be included in notice

Authority: IC 12-8-4-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15; IC 16-27-1-5; IC 16-28

Sec. 3. The notice required by section 2 of this rule shall advise residents of housing with services establishments of the following rights:

(1) That each resident, or the resident's representative, must be given:

(A) a complete copy of the contract between the establishment and the resident or the resident's representative;

(B) all supporting documents and attachments; and

(C) any changes whenever changes are made.

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

(A) The name, street address, and mailing address of the establishment.

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

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

(D) A statement describing the disclosure document and licensure status, if any, of the establishment and any person providing health related services or supportive services under arrangement with the operator.

(E) The term of the contract.

(F) 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.

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

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

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

(J) A description of the establishment's complaint resolution process available to the residents.

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

(L) The establishment's referral procedures if the contract is terminated.

(M) The criteria used by the establishment to determine who may continue to reside in the establishment. That the criteria must address the following:

(i) 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.

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

(N) 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 clause (M).

(O) The billing and payment procedures and requirements.

(3) That an establishment's contract must state that:

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

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

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

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

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

(ii) require a resident to use home health services as defined in IC 16-27-1-5.

(4) That except where a resident's health or safety or the health and 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.

(Division of Disability and Rehabilitative Services; 460 IAC 1-11-3; filed May 9, 2005, 1:50 p.m.: 28 IR 2688)

460 IAC 1-11-4 Location of notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 4. (a) Each area agency on aging shall post a notice or notices in areas accessible to consumers, including, but not limited to, the following:

(1) Corporate waiting rooms.

(2) Senior centers.

(3) Meal sites.

(b) Each center for independent living shall post a notice or notices in each building, wing, floor, or common area that is open and available to residents and family members at any time.

(c) Each establishment shall post a notice or notices in each building, wing, floor, or common area that is open and available to residents and family members at any time. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-4; filed May 9, 2005, 1:50 p.m.: 28 IR 2688)*

460 IAC 1-11-5 Format of notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 5. (a) The notice or notices shall be in a language appropriate for the individuals residing in the facility or frequenting AAA sites.

(b) The format and the wording of the notice shall be approved by the division.

(c) The posting shall include contact information for the local and state long term care ombudsman. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-5; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-6 Filing of complaints by residents; investigation; resolution

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-13; IC 12-10-15

Sec. 6. (a) A complaint may be filed by a resident or on behalf of a resident with the local long term care ombudsman or state long term care ombudsman, or both, regarding an establishment's violation of a requirement contained in IC 12-10-15 or this rule, or both.

(b) The local long term care ombudsman or state long term care ombudsman, or both, shall perform an investigation into the

allegations of the complaint.

(c) If the complaint is substantiated after investigation, the local long term care ombudsman or state long term care ombudsman, or both, will work with the facility to correct the problem.

(d) If the problem is resolved and remains resolved, the problem, condition, or incident will not be reflected on the establishment's record in the division.

(e) If the problem is not resolved, the complaint shall be referred to the director for appropriate action and will become public record. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-6; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-7 Response by establishment to a complaint

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-13; IC 12-10-15

Sec. 7. If a complaint by a resident or a resident's representative regarding an establishment's violation of a requirement contained in IC 12-10-15 or this rule, or both, is forwarded to the director, the director shall send a copy of the complaint to the establishment against which a complaint has been filed. The establishment shall have fifteen (15) days in which to file a response with the director. The director may, if necessary, require additional information from or investigation of the establishment. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-7; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-8 Imposition of penalty

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 8. (a) If the director finds that an establishment has violated a requirement contained in IC 12-10-15, the director shall impose a penalty of one hundred dollars ($100) per day for each requirement that has been violated.

(b) If the establishment has been found to have had two (2) or more violations within the previous two (2) years, the director may impose a fine of a minimum of two hundred dollars ($200) per day for each requirement that has been violated.

(c) A fine will be imposed beginning from the time the complaint is verified by the long term care ombudsman until such time as the violation is corrected.

(d) The total penalty for each violation may not exceed ten thousand dollars ($10,000). *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-8; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-9 Administrative review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5-3-7; IC 12-11-1.1; IC 12-11-2.1

Sec. 9. (a) A person who is aggrieved by a penalty imposed under this rule may request review under IC 4-21.5-3-7.

(b) To qualify for administrative review of a penalty imposed under this rule, a person shall file a written petition for review that does the following:

(1) States facts demonstrating that the person is:
    (A) a person to whom the action is specifically directed;
    (B) aggrieved or adversely affected by the action; or
    (C) entitled to review under any law.
(2) Is filed with the director of the division within fifteen (15) days after the person receives notice of the agency action or determination.

(c) Administrative review shall be conducted in accordance with IC 4-21.5.

(d) If a request for a hearing is not filed within fifteen (15) days after the penalty is imposed, the determination of the director and the penalty are final. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-9; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-10 Substantial and repeated violations

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5-3-7; IC 12-10-15; IC 12-11-1.1; IC 12-11-2.1

Sec. 10. (a) If the director determines that an establishment has had substantial and repeated violations of the requirements contained in IC 12-10-15, the director may prohibit an establishment from using the term "assisted living" to describe the establishment's services and operations to the public.

(b) An establishment that is aggrieved by a penalty imposed under this rule may request review under IC 4-21.5-3-7.

(c) To qualify for administrative review of a penalty imposed under this rule, an establishment shall file a written petition for review that does the following:

(1) States facts demonstrating that the establishment is:

(A) an establishment to whom the action is specifically directed;

(B) aggrieved or adversely affected by the action; or

(C) entitled to review under any law.

(2) Is filed with the director of the division within fifteen (15) days after the establishment receives notice of the agency action or determination.

(d) Administrative review shall be conducted in accordance with IC 4-21.5. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-10; filed May 9, 2005, 1:50 p.m.: 28 IR 2690)*

460 IAC 1-11-11 Intentional violations

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5; IC 12-10-15; IC 12-11-1.1; IC 12-11-2.1

Sec. 11. If the director determines that an operator or administrator of an establishment has intentionally violated the requirements contained in IC 12-10-15, or has made fraudulent and material misrepresentations to a resident, the director may request the attorney general to investigate and take appropriate action against the operator or administrator. *(Division of Disability and Rehabilitative Services; 460 IAC 1-11-11; filed May 9, 2005, 1:50 p.m.: 28 IR 2690)*

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