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**TITLE 410 INDIANA STATE DEPARTMENT OF
HEALTH**

Proposed Rule
LSA Document #03-275

DIGEST

Amends 410 IAC 16.2-3.1 and 410 IAC 16.2-5, regulating comprehensive and residential care health facilities, by adding a definition of cognitive and to require additional in-service educational requirements of facility personnel, designation of and qualifications for a director of an Alzheimer's and dementia special care unit, facilities to provide a resident a copy of the Alzheimer's and dementia care unit disclosure form and to clarify rules under resident behavior and facility practices, health services, and resident's rights. Effective 30 days after filing with the secretary of state.

410 IAC 16.2-1.1-11.5	410 IAC 16.2-3.1-29
410 IAC 16.2-3.1-3	410 IAC 16.2-5-1.2
410 IAC 16.2-3.1-4	410 IAC 16.2-5-1.3
410 IAC 16.2-3.1-13	410 IAC 16.2-5-1.4
410 IAC 16.2-3.1-14	410 IAC 16.2-5-2
410 IAC 16.2-3.1-26	410 IAC 16.2-5-4

SECTION 1. 410 IAC 16.2-1.1-11.5 IS ADDED TO READ AS FOLLOWS:

410 IAC 16.2-1.1-11.5 "Cognitive" defined

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1

Sec. 11.5. "Cognitive" means a person's ability:

- (1) for short and long term memory or recall;**
- (2) to make decisions regarding the tasks of daily living; and**
- (3) to make self understood.**

(Indiana State Department of Health; 410 IAC 16.2-1.1-11.5)

SECTION 2. 410 IAC 16.2-3.1-3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-3 Residents' rights

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1

Sec. 3. (a) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

- ~~(1) The resident has the right~~ To exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.
- ~~(2) The resident has the right~~ To be free of the following:
 - (A) Interference.
 - (B) Coercion.
 - (C) Discrimination.
 - (D) Reprisal from or threat of reprisal from the facility in exercising his or her rights.

(b) The resident has the right to the following:

- (1) Examination of the results of the most recent annual survey of the facility conducted by federal or state surveyors, ~~and~~ any plan of correction in effect with respect to the facility, and any subsequent surveys. The results must be available for examination in the facility in a place readily accessible to residents and a notice posted of their availability.
- (2) Receipt of information from agencies acting as client advocates and the opportunity to contact these agencies.

(c) In the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the residents are exercised by the person appointed under state law to act on the resident's behalf.

(d) In the case of an incompetent resident who has not been adjudicated incompetent by a state court, any legal representative may exercise the resident's rights to the extent provided by state law.

(e) The resident has the right to:

- (1) refuse to perform services for the facility;
- (2) perform services for the facility, if he or she chooses, when:
 - (A) the facility has documented the need or desire for work in the care plan;
 - (B) the plan specifies the nature of the services performed and whether the services are voluntary or paid;
 - (C) compensation for paid services is at or above the prevailing rates; and
 - (D) the resident agrees to the work arrangement described in the care plan.

(f) The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(g) A resident has the right to organize and participate in resident groups in the facility.

(h) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(i) The facility must provide a resident or family group, if one exists, with private space.

(j) Staff or visitors may attend meetings only at the group's invitation.

(k) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

(l) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families and report back at a later time in accordance with facility policy.

(m) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(n) The resident has the right to the following:

- (1) Choose a personal attending physician ~~or and~~ other ~~provider~~ **providers** of services. If a physician or other provider of services, **or both**, of the resident's choosing fails to fulfill a given federal or state requirement to assure the provisions of appropriate and adequate care and treatment, the facility will have the right, after consulting with the resident, the physician, ~~or and the~~ other provider of services, to seek alternate physician participation or services from another provider.
- (2) Be fully informed in advance about care and treatment, and of any changes in that care and treatment, that may affect the resident's well-being.
- (3) Participate in planning care and treatment or changes in care and treatment unless adjudged incompetent or otherwise found to be incapacitated under state law.

(o) The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(p) Personal privacy includes the following:

- (1) Accommodations.
- (2) Medical treatment.

- (3) Written and telephone communications.
- (4) Personal care.
- (5) Visits.
- (6) Meetings of family and resident groups.

This does not require the facility to provide a private room for each resident.

(q) Except as provided in subsection (r), the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.

(r) The resident's rights to refuse release of personal and clinical records does not apply when:

- (1) the resident is transferred to another health care institution; or
- (2) record release is required by law.

(s) The resident has the right to privacy in written communications, including the right to:

- (1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident;
- (2) have access to stationery, postage, and writing implements at the resident's own expense; and
- (3) receive any literature or statements of services that accompany mailings from Medicaid that the facility receives on behalf of the resident.

(t) The resident has the right to be cared for in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(u) The resident has the right to the following:

- (1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care.
- (2) Interact with members of the community both inside and outside the facility.
- (3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(v) A resident has the right to the following:

- (1) Reside and receive services in the facility with reasonable accommodations of the individual's needs and preferences, except when the health or safety of the individual or other residents would be endangered.
- (2) Receive notice before the resident's room or roommate in the facility is changed.

(w) The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(x) For purposes of IC 16-28-5-1, a breach of:

- (1) subsection (a), (b)(1), (e), (n), (o), (p), (q), (r), (t), or (w) is a deficiency;
- (2) subsection (b)(2), (c), (d), (f), (g), (l), (m), (s), (u), or (v) is a noncompliance; and
- (3) subsection (h), (i), (j), or (k) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-3; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1528, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 3. 410 IAC 16.2-3.1-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-4 Notice of rights and services

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 12-10-5.5; IC 16-28-5-1; IC 16-36-1-3; IC 16-36-1-7; IC 16-36-4-7; IC 16-36-4-13; IC 30-5-7-4

Sec. 4. (a) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing. A copy of the resident's rights must be available in a publicly accessible area. The copy must be at least 12-point type.

(b) The resident has the right to the following:

- (1) Immediate access to the current active clinical record.
- (2) Upon an oral or written request, to access all other records pertaining to himself or herself within twenty-four (24) hours.
- (3) After receipt of his or her records for inspection, to purchase at a cost, not to exceed the community standard, photocopies of the records or any portions of them upon request and two (2) working days' advance notice to the facility.

(c) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition.

(d) The resident has the right to refuse treatment. Any refusals of treatment must be accompanied by counseling on the medical consequences of such refusal.

(e) The resident has the right to refuse participation in experimental research. All experimental research must be conducted in compliance with state, federal, and local laws and professional standards.

(f) The facility must do the following:

(1) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or when the resident becomes eligible for Medicaid of the following:

(A) The items and services that are included in nursing facility services under the state plan and for which the resident may not be charged.

(B) Those other items and services that the facility offers and for which the resident may be charged and the amount of the charges.

(2) Inform each resident when changes are made to the items and services specified in this section.

(3) Inform each resident before, or at the time of admission, in writing and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(4) Provide written information to each resident concerning the following:

(A) The resident's rights under IC 16-36-1-3 and IC 16-36-1-7 to make decisions concerning their care, including the right to:

(i) accept or refuse medical or surgical treatment; and ~~the right to~~

(ii) formulate advance directives.

(B) The facility's written policies regarding the implementation of such rights, including a clear and precise statement of limitation if the facility or its agent cannot implement an advance directive on the basis of conscience ~~pursuant to~~ **under** IC 16-36-4-13.

(5) Document in the resident's clinical record whether the resident has executed an advance directive and ~~to~~ include a copy of such advance directive in the clinical record.

(6) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.

(7) Ensure compliance with the requirements of state law regarding advance directives.

(8) Provide for education for staff on issues concerning advance directives.

(9) Provide for community education regarding advance directives either directly or in concert with other facilities or health care providers or other organizations.

(10) Distribute to each resident upon admission the state developed written description of the law concerning advance directives.

(11) If the facility is required to submit an Alzheimer's and dementia special care unit disclosure form under IC 12-10-5.5, provide the resident at the time of admission to the facility with a copy of the completed Alzheimer's and dementia special care unit disclosure form.

(g) A facility is not required to provide care that conflicts with an advance directive ~~pursuant to~~ **under** IC 16-36-4-7.

(h) If a facility objects to implementation of an advance directive on the basis of conscience, they must comply with IC 30-5-7-4.

(i) Residents have the right to be informed by the facility, in writing, at least thirty (30) days in advance of the effective date, of any changes in the rates or services that these rates cover.

(j) The facility must furnish on admission a written description of legal rights, including the following:

- (1) A description of the manner of protecting personal funds under this section.
- (2) A statement that the resident may file a complaint with the director concerning resident abuse, neglect, misappropriation of resident property, and other practices of the facility.
- (3) The most recently known addresses and telephone numbers, including, but not limited to, the following:
 - (A) The department.
 - (B) The office of the secretary of family and social services.
 - (C) The ombudsman designated by the division of disability, aging, and rehabilitative services.
 - (D) The area agency on aging.
 - (E) The local mental health center.
 - (F) The protection and advocacy services commission.
 - (G) Adult protective services.

These shall be displayed in a prominent place in the facility.

(k) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(l) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information, about how to:

- (1) apply for and use Medicare and Medicaid benefits; and ~~how to~~
- (2) receive refunds for previous payments covered by such benefits.

(m) For purposes of IC 16-28-5-1, a breach of:

- (1) subsection (h) is an offense;
- (2) subsection (d), (e), or (g) is a deficiency;
- (3) subsection (a), (b), (c), (f)(1), (f)(2), (f)(3), (f)(4), (f)(5), (f)(8), (f)(10), (i), (j)(1), (k), or (l) is a noncompliance; and
- (4) subsection (f)(6), (f)(7), (f)(9), (j)(2), or (j)(3) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-4; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1529, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; errata filed Jun 4, 1997, 1:47 p.m.: 20 IR 2789; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 4. 410 IAC 16.2-3.1-13 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-13 Administration and management

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 12-10-5.5; IC 16-28-5-1; IC 25-19-1

Sec. 13. (a) The licensee is responsible for compliance with all applicable laws and rules. The licensee has full authority and responsibility for the organization, management, operation, and control of the licensed facility. The delegation of any authority by the licensee does not diminish the responsibilities of the licensee.

(b) The licensee shall provide the number of staff as required to carry out all the functions of the facility, including:

- (1) initial orientation of all employees;
- (2) a continuing inservice education and training program for all employees; and
- (3) provision of supervision for all employees.

(c) If a facility offers services in addition to those provided to its long term care residents, the administrator is responsible for assuring that such additional services do not adversely affect the care provided to its residents.

(d) The licensee shall notify the department within three (3) working days of a vacancy in the administrator's position. The licensee shall also notify the director of the name and license number of the replacement administrator.

(e) An administrator shall be employed to work in each licensed health facility. For purposes of this subsection, an individual can only be employed as an administrator in one (1) health facility or one (1) hospital-based long term care unit at a time.

(f) In the administrator's absence, an individual shall be authorized, in writing, to act on the administrator's behalf.

(g) The administrator is responsible for the overall management of the facility but shall not function as a departmental supervisor, for example, director of nursing or food service supervisor, during the same hours. The responsibilities of the administrator shall include, but are not limited to, the following:

(1) Immediately informing the division by telephone, followed by written notice within twenty-four (24) hours, of unusual occurrences that directly threaten the welfare, safety, or health of the resident or residents, including, but not limited to, any:

- (A) epidemic outbreaks;
- (B) poisonings;
- (C) fires; or
- (D) major accidents.

If the department cannot be reached, such as on holidays or weekends, a call shall be made to the emergency telephone number ((317) 383-6144) of the division.

(2) Promptly arranging for medical, dental, podiatry, or nursing care or other health care services as prescribed by the attending physician.

(3) Obtaining director approval prior to the admission of an individual under eighteen (18) years of age to an adult facility.

(4) Ensuring that the facility maintains, on the premises, time schedules and an accurate record of actual time worked that indicates the employees' full names and the dates and hours worked during the past twelve (12) months. This information shall be furnished to the division staff upon request.

(5) Maintaining a copy of this article and making it available to all personnel and the residents.

(6) Maintaining reports of surveys conducted by the division in each facility for a period of two (2) years and making the reports available for inspection to any member of the public upon request.

(h) Each facility, except a facility that cares for children or an intermediate care facility for the mentally retarded, shall encourage all employees serving residents or the public to wear name and title identification.

(i) Each facility shall establish and implement a written policy manual to ensure that resident care and facility objectives are attained, to include:

- (1) the range of services offered; ~~resident~~
- (2) **residents'** rights;
- (3) personnel administration; and
- (4) facility operations.

(j) The licensee shall approve the policy manual, and subsequent revisions, in writing. The policy manual shall be reviewed and dated at least annually. The resident care policies shall be developed by a group of professional personnel and approved by the medical director.

(k) The policies shall be maintained in a **manual or** manuals accessible to employees and made available upon request to:

- (1) residents;
- (2) the department;
- (3) the sponsor or surrogate of a resident; and
- (4) the public.

Management/ownership confidential directives are not required to be included in the policy manual; however, the policy manual must include all of the facility's operational policies.

(l) To assure continuity of care of residents in cases of emergency, the facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, missing residents, and including situations that may require emergency relocation of residents. Facilities caring for children shall have a written plan outlining the staff procedures, including isolation and evacuation, in case of an outbreak of childhood diseases.

(m) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under a written agreement. Such agreements pertaining to services furnished by outside resources must specify, in writing, that the facility assumes responsibility for the following:

- (1) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility.
- (2) The timeliness of the services.
- (3) Orientation to pertinent facility policies and residents to whom they are responsible.

(n) Each facility shall conspicuously post the license or a true copy thereof within the facility in a location accessible to public view.

(o) Each facility shall submit an annual statistical report to the department.

(p) The facility must have in effect a written transfer agreement with one (1) or more hospitals that reasonably assures the following:

- (1) Residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician.
- (2) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.
- (3) Specification of the responsibilities assumed by both the discharging and receiving institutions for prompt notification of the impending transfer of the resident for:
 - (A) agreement by the receiving institution to admit the resident;
 - (B) arranging appropriate transportation and care of the resident during transfer; and
 - (C) the transfer of personal effects, particularly money and valuables, and of information related to such items.
- (4) Specification of the restrictions with respect to the types of services available ~~and/or~~ **or** the types of residents or health conditions that will not be accepted by the hospital or the facility, **or both**, including any other criteria relating to the transfer of residents.

The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(q) A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(r) The facility must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(s) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility.

(t) The governing body shall appoint the administrator who is:

- (1) licensed under IC 25-19-1; and
- (2) responsible for the management of the facility.

(u) The facility must designate a physician to serve as medical director.

(v) The medical director shall be responsible for the following:

- (1) Acting as a liaison between the administrator and the attending physicians to encourage physicians to write orders promptly and to make resident visits in a timely manner.
- (2) Reviewing, evaluating, and implementing resident care policies and procedures and to guide the director of nursing services in matters related to resident care policies and services.
- (3) Reviewing incidents and accidents that occur on the premises to identify hazards to health and safety.
- (4) Reviewing employees preemployment physicals and health reports and monitoring employees health status.
- (5) The coordination of medical care in the facility.

(w) In facilities that are required under IC 12-10-5.5 to submit an Alzheimer's and dementia special care unit disclosure form, the facility must designate a director for the Alzheimer's and dementia special care unit. The director shall have an

earned degree from an educational institution in a health care, mental health, or social service profession or be a licensed health care professional. The director shall have a minimum of one (1) year work experience with dementia or Alzheimer's residents, or both, within the past five (5) years. Persons serving as a director for an existing Alzheimer's and dementia special care unit at the time of adoption of this rule are exempt from the degree and experience requirements. The director shall have a minimum of twelve (12) hours of dementia-specific training within three (3) months of initial employment and six (6) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

(x) The director of the Alzheimer's and dementia care unit shall do the following:

(1) Oversee the operation of the unit.

(2) Ensure that personnel assigned to the unit receive required inservice training.

(3) Ensure that care provided to Alzheimer's and dementia care unit residents is consistent with inservice training, current Alzheimer's and dementia care practices, and regulatory standards.

~~(w)~~ (y) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a), (c), (g), (r), (t), (u), ~~or~~ (v), **or** (x) is a deficiency;

(2) subsection (b), (d), (e), (f), (i), (l), (p), (q), ~~or~~ (s), **or** (w) is a noncompliance; and

(3) subsection (h), (j), (k), (m), (n), or (o) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-13; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1535, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 5. 410 IAC 16.2-3.1-14 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-14 Personnel

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 14. (a) Each facility shall have specific procedures written and implemented for the screening of prospective employees. Specific inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) A facility must not use any individual working in the facility as a nurse aide for more than four (4) months on a full-time, part-time, temporary, per diem, or other basis unless that individual:

(1) is competent to provide nursing and nursing-related services; and

(2) has completed a training and competency evaluation program approved by the division or a competency evaluation program approved by the division.

(c) Each nurse aide who is hired to work in a facility shall have successfully completed a nurse aide training program approved by the division or shall enroll in the first available approved training program scheduled to commence within sixty (60) days of the date of the nurse aide's employment. The program may be established by the facility or by an organization or institution. The training program shall consist of at least the following:

(1) Thirty (30) hours of classroom instruction within one hundred twenty (120) days of employment. At least sixteen (16) of those hours shall be in the following areas prior to any direct contact with a resident:

(A) Communication and interpersonal skills.

(B) Infection control.

(C) Safety/emergency procedures, including the Heimlich maneuver.

(D) Promoting resident's independence.

(E) Respecting residents' rights.

(2) The remainder of the thirty (30) hours of instruction shall include the following:

(A) Basic nursing skills as follows:

(i) Taking and recording vital signs.

(ii) Measuring and recording height and weight.

(iii) Caring for residents' environment.

(iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

(v) Caring for residents when death is imminent.

(B) Personal care skills, including, but not limited to, the following:

(i) Bathing.

(ii) Grooming, including mouth care.

(iii) Dressing.

(iv) Toileting.

(v) Assisting with eating and hydration.

(vi) Proper feeding techniques.

(vii) Skin care.

(viii) Transfers, positioning, and turning.

(C) Mental health and social service needs as follows:

(i) Modifying aides' behavior in response to residents' behavior.

(ii) Awareness of developmental tasks associated with the aging process.

(iii) How to respond to residents' behavior.

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity.

(v) Using the resident's family as a source of emotional support.

(D) Care of cognitively impaired residents as follows:

(i) Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(ii) Communicating with cognitively impaired residents.

(iii) Understanding the behavior of cognitively impaired residents.

(iv) Appropriate responses to the behavior of cognitively impaired residents.

(v) Methods of reducing the effects of cognitive impairments.

(E) Basic restorative services as follows:

(i) Training the resident in self-care according to the resident's abilities.

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing.

(iii) Maintenance of range of motion.

(iv) Proper turning and positioning in bed and chair.

(v) Bowel and bladder training.

(vi) Care and use of prosthetic and orthotic devices.

(F) Residents' rights as follows:

(i) Providing privacy and maintenance of confidentiality.

(ii) Promoting residents' right to make personal choices to accommodate their needs.

(iii) Giving assistance in resolving grievances and disputes.

(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities.

(v) Maintaining care and security of residents' personal possessions.

(vi) Promoting residents' right to be free from abuse, mistreatment, and neglect, and the need to report any instances of such treatment to appropriate facility staff.

(vii) Avoiding the need for restraints in accordance with current professional standards.

(3) Seventy-five (75) hours of supervised clinical experience, at least sixteen (16) hours of which must be in directly supervised practical training. As used in this subdivision, "directly supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under direct supervision of a registered nurse or a licensed practical nurse. These hours shall consist of normal employment as a nurse aide under the supervision of a licensed nurse.

(4) Training that ensures the following:

(A) Students do not perform any services for which they have not trained and been found proficient by the instructor.

(B) Students who are providing services to residents are under the general supervision of a licensed nurse.

(d) A facility must arrange for individuals used as nurse aides, as of the effective date of this rule to participate in a competency evaluation program approved by the division, and preparation necessary for the individual to complete the program.

(e) Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless **the individual:**

(1) ~~the individual~~ is a full-time employee in a training and competency evaluation program approved by the division; or

(2) ~~the individual~~ can prove that he or she has recently successfully completed a training and competency evaluation program approved by the division and has not yet been included in the registry.
Facilities must follow up to ensure that such individual actually becomes registered.

(f) A facility must check with all state nurse aide registries it has reason to believe contain information on an individual before using that individual as a nurse aide.

(g) If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of twenty-four (24) consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(h) The facility must complete a performance review of every nurse aide at least once every twelve (12) months and must provide regular inservice education based on the outcome of these reviews. The inservice training must be as follows:

- (1) Sufficient to ensure the continuing competence of nurse aides but must be no less than twelve (12) hours per year.
- (2) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff.
- (3) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(i) The facility must ensure that nurse aides and qualified medication aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments and described in the care plan.

(j) Medication shall be administered by licensed nursing personnel or qualified medication aides. If medication aides handle or administer drugs or perform treatments requiring medications, the facility shall ensure that the persons have been properly qualified in medication administration by a state-approved course. Injectable medications shall be given only by licensed personnel.

(k) There shall be an organized ongoing inservice education and training program planned in advance for all personnel. This training shall include, but not be limited to, the following:

- (1) ~~Resident~~ **Residents'** rights.
- (2) Prevention and control of infection.
- (3) Fire prevention.
- (4) Safety and accident prevention.
- (5) Needs of specialized populations served.
- (6) **Care of cognitively impaired residents.**

(l) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel as follows. For nursing personnel, this shall include at least twelve (12) hours of ~~in-services~~ **inservice** per calendar year and six (6) hours of inservice per calendar year for nonnursing personnel.

(m) Inservice programs for items required under subsection (k) shall contain a means to assess learning by participants.

(n) The administrator may approve attendance at outside workshops and continuing education programs related to that individual's responsibilities in the facility. Documented attendance at these workshops and programs meets the requirements for inservice training.

(o) Inservice records shall be maintained and shall indicate the following:

- (1) The time, date, and location.
- (2) Name of the instructor.
- (3) The title of the instructor.
- (4) The name of the participants.
- (5) The program content of inservice.

The employee will acknowledge attendance by written signature.

(p) Initial orientation of all staff must be conducted and documented and shall include the following:

(1) Instructions on the needs of the specialized **population or** populations served in the facility, for example:

- (A) aged;
- (B) developmentally disabled;
- (C) mentally ill; ~~or~~
- (D) children; **or**
- (E) **care of cognitively impaired;**

residents.

- (2) A review of residents' rights and other pertinent portions of the facility's policy manual.
- (3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures and universal precautions.
- (4) A detailed review of the appropriate job description, including a demonstration of equipment and procedures required of the specific position to which the employee will be assigned.
- (5) Review of ethical considerations and confidentiality in resident care and records.
- (6) For direct care staff, instruction in the particular needs of each resident to whom the employee will be providing care.

(q) Each facility shall maintain current and accurate personnel records for all employees. The personnel records for all employees shall include the following:

- (1) Name and address of employee.
- (2) Social Security number.
- (3) Date of beginning employment.
- (4) Past employment, experience, and education if applicable.
- (5) Professional licensure, certification, or registration number if applicable.
- (6) Position in the facility and job description.
- (7) Documentation of orientation to the facility and to the specific job skills.
- (8) Signed ~~acknowledgment~~ **acknowledgment** of orientation to ~~resident~~ **residents'** rights.
- (9) Performance evaluations in accordance with the facility's policy.
- (10) Date and reason for separation.

(r) The employee's personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

(s) Professional staff must be licensed, certified, or registered in accordance with applicable state laws or rules.

(t) A physical examination shall be required for each employee of a facility within one (1) month prior to employment. The examination shall include a tuberculin skin test, using the Mantoux method (5 TU PPD), administered by persons having documentation of training from a department-approved course of instruction in intradermal tuberculin skin testing, reading, and recording unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The tuberculin skin test must be read prior to the employee starting work. The facility must assure the following:

- (1) At the time of employment, or within one (1) month prior to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency of repeat testing will depend on the risk of infection with tuberculosis.
- (2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.
- (3) The facility shall maintain a health record of each employee that includes:
 - (A) a report of the preemployment physical examination; and
 - (B) reports of all employment-related health examinations.
- (4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(u) In addition to the required inservice hours in subsection (l), staff who have regular contact with residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months of initial employment, or within thirty (30)

days for personnel assigned to the Alzheimer's and dementia special care unit, and three (3) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

~~(u)~~ (v) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (c), (e), (f), (g), (i), (j), or (s) is a deficiency;

(2) subsection (a), (b), (d), (h), (k), (l), (m), (n), (o), (p), ~~or~~ (t), **or** (u) is a noncompliance; and

(3) subsection (q) or (r) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-14; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1537, eff Apr 1, 1997; errata, 20 IR 1738; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; filed May 16, 2001, 2:09 p.m.: 24 IR 3024; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 6. 410 IAC 16.2-3.1-26 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-26 Resident behavior and facility practices

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1

Sec. 26. (a) Less restrictive measures must have been tried by the interdisciplinary team and shown to be ineffective before restraints are applied.

(b) Restraint or seclusion shall be employed only by order of a physician, and the type of restraint or seclusion shall be specified in the order.

(c) Per required need (PRN) restraint or seclusion shall only be employed upon the authorization of a licensed nurse. All contacts with a nurse or physician not on the premises for authorization to administer PRN restraints shall be documented in the nursing notes indicating the time and date of the contact.

(d) The facility policy manual shall designate who is authorized to apply restraints. The facility shall have written procedures in which the persons authorized to apply restraints have been properly trained.

(e) In emergencies when immediate physical restraint or seclusion is needed for the protection of the resident or others, restraint or seclusion may be authorized by a licensed nurse for a period not to exceed twelve (12) hours. A physician's order to continue restraint or seclusion must be obtained in order to continue the restraint beyond the twelve (12) hour period.

(f) A record of physical restraint and seclusion of a resident shall be kept in accordance with this rule.

(g) Each resident under restraint and seclusion shall be visited by a member of the nursing staff at least once every hour and more frequently if the resident's condition requires.

(h) Each physically restrained or secluded individual shall be temporarily released from restraint or seclusion at least every two (2) hours or more often if necessary except when the resident is asleep. When the resident in restraint is temporarily released, the resident shall be assisted to ambulate, toileted, or changed in position as the resident's physical condition permits.

(i) A resident shall not be placed alone in a room with a full, solid locked door.

(j) Key lock restraints shall not be used or available in the facility. ~~The acceptable forms of physical restraint include, but are not limited to, the following:~~

~~(1) Cloth vests.~~

~~(2) Soft cloth ties.~~

~~(3) Soft cloth mittens.~~

~~(4) Seat belts.~~

~~(5) Trays with spring release devices.~~

(k) Chemical restraint shall be authorized in writing by a physician.

(l) An order for chemical restraints shall specify the dosage and the interval of and reasons for the use of chemical restraint.

(m) Administration of chemical restraints shall be documented in accordance with this rule.

(n) Restraints and seclusion shall be used in such a way as not to cause physical injury to the resident.

(o) Restraints of any type or seclusion shall only be used for the protection and safety of residents or others as required by medical symptoms that warrant the restraint, or safety issues that warrant the seclusion, and shall not be used as a punishment. Restraints and seclusion shall be used in such a way as to minimize discomfort to the resident.

(p) Restraints or seclusion shall be applied in a manner that permits rapid removal in case of fire or other emergency.

(q) The resident's legal representative shall be notified of the need for restraint or seclusion at the time of the physician's initial order or within twenty-four (24) hours after emergency restraint or seclusion is applied. Such notification shall be documented in the nursing notes. After the physician's order for restraint or seclusion is initially written, the legal representative may request in writing not to be notified.

(r) The least restrictive restraint must be used. The continued use of the restraint or seclusion must be reviewed at each care plan conference. Least or lesser restrictive measures must be considered at each meeting.

(s) The use of restraints must be reviewed by the interdisciplinary team within one (1) month after the application of the restraint, and every thirty (30) days for the first ninety (90) days of the restraints, and at least quarterly thereafter.

(t) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (j) or (n) is an offense;

(2) subsection (a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (o), (p), or (r) is a deficiency; and

(3) subsection (f), (m), (q), or (s) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-26; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1550, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 7. 410 IAC 16.2-3.1-29 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-29 Preadmission evaluation

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1

Sec. 29. (a) The facility is responsible for the evaluation of prospective residents to ensure that only those residents whose medical, **cognitive**, and psychosocial needs can be met by the facility or through community resources are admitted to the facility.

(b) An evaluation of the prospective residents shall be made prior to admission. The evaluation shall include personal or telephone interviews with:

(1) the resident;

(2) the resident's physician; or

(3) the representative of the facility from which the resident is being transferred if applicable.

A brief record of the evaluation shall be retained by the facility for those residents who are admitted to the facility and shall be used, as applicable, in planning for the care of the resident.

(c) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a) is an offense; and

(2) subsection (b) is a deficiency.

(Indiana State Department of Health; 410 IAC 16.2-3.1-29; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1551, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 8. 410 IAC 16.2-5-1.2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.2 Residents' rights

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 4-21.5; IC 12-10-5.5; IC 12-10-15-9; IC 16-28-5-1

Sec. 1.2. (a) Residents have the right to have their rights recognized by the licensee. The licensee shall establish written policies regarding residents' rights and responsibilities in accordance with this article and shall be responsible, through the administrator, for their implementation. These policies and any adopted additions or changes thereto shall be made available to the resident, staff, legal representative, and general public. Each resident shall be advised of residents' rights prior to admission and shall signify, in writing, upon admission and thereafter if the residents' rights are updated or changed. There shall be documentation that each resident is in receipt of the described residents' rights and responsibilities. A copy of the residents' rights must be available in a publicly accessible area. The copy must be in at least 12-point type and a language the resident understands.

(b) Residents have the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Residents have the right to exercise their rights as a resident of the facility and as a citizen or resident of the United States.

(c) Residents have the right to exercise any or all of the enumerated rights without:

- (1) restraint;
- (2) interference;
- (3) coercion;
- (4) discrimination; or
- (5) threat of reprisal;

by the facility. These rights shall not be abrogated or changed in any instance, except that, when the resident has been adjudicated incompetent, the rights devolve to the resident's legal representative. When a resident is found by his or her physician to be medically incapable of understanding or exercising his or her rights, the rights may be exercised by the resident's legal representative.

(d) Residents have the right to be treated with consideration, respect, and recognition of their dignity and individuality.

(e) Residents have the right to be provided, at the time of admission to the facility, the following:

- (1) A copy of his or her admission agreement.
- (2) A written notice of the facility's basic daily or monthly rates.
- (3) A written statement of all facility services (including those offered on an as needed basis).
- (4) Information on related charges, admission, readmission, and discharge policies of the facility.
- (5) The facility's policy on voluntary termination of the admission agreement by the resident, including the disposition of any entrance fees or deposits paid on admission. The admission agreement shall include at least those items provided for in IC 12-10-15-9.

(6) If the facility is required to submit an Alzheimer's and dementia special care unit disclosure form under IC 12-10-5.5, a copy of the completed Alzheimer's and dementia special care unit disclosure form.

(f) Residents have the right to be informed of any facility policy regarding overnight guests. This policy shall be clearly stated in the admission agreement.

(g) Residents have the right to be informed by the facility, in writing at least thirty (30) days in advance of the effective date, of any changes in the rates or services that these rates cover.

(h) The facility must furnish on admission the following:

- (1) A statement that the resident may file a complaint with the director concerning resident abuse, neglect, misappropriation of resident property, and other practices of the facility.
- (2) The most recently known addresses and telephone numbers of the following:
 - (A) The department.
 - (B) The office of the secretary of family and social services.

- (C) The ombudsman designated by the division of disability, aging, and rehabilitation services.
- (D) The area agency on aging.
- (E) The local mental health center.
- (F) Adult protective services.

The addresses and telephone numbers in this subdivision shall be posted in an area accessible to residents and updated as appropriate.

(i) The facility will distribute to each resident upon admission the state developed written description of law concerning advance directives.

(j) Residents have the right to the following:

- (1) Participate in the development of his or her service plan and in any updates of that service plan.
- (2) Choose the attending physician and other providers of services, including arranging for on-site health care services unless contrary to facility policy. Any limitation on the resident's right to choose the attending physician ~~and/or~~ **or** service provider, **or both**, shall be clearly stated in the admission agreement. Other providers of services, within the content of this subsection, may include home health care agencies, hospice care services, or hired individuals.
- (3) Have a pet of his or her choice, so long as the pet does not pose a health or safety risk to residents, staff, or visitors or a risk to property unless prohibited by facility policy. Any limitation on the resident's right to have a pet of his or her choice shall be clearly stated in the admission agreement.
- (4) Refuse any treatment or service, including medication.
- (5) Be informed of the medical consequences of a refusal under subdivision (4) and have such data recorded in his or her clinical record if treatment or medication is administered by the facility.
- (6) Be afforded confidentiality of treatment.
- (7) Participate or refuse to participate in experimental research. There must be written ~~acknowledgment~~ **acknowledgement** of informed consent prior to participation in research activities.

(k) The facility must immediately consult the resident's physician and the resident's legal representative when the facility has noticed:

- (1) a significant decline in the resident's physical, mental, or psychosocial status; or
- (2) a need to alter treatment significantly, that is, a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment.

(l) If the facility participates in the Medicaid waiver ~~and/or~~ **or** residential care assistance programs, **or both**, the facility must provide to residents written information about how to apply for Medicaid benefits and room and board assistance.

(m) The facility must promptly notify the resident and, if known, the resident's legal representative when there is a change in roommate assignment.

(n) Residents may, throughout the period of their stay, voice grievances to the facility staff or to an outside representative of their choice, recommend changes in policy and procedure, and receive reasonable responses to their requests without fear of reprisal or interference.

(o) Residents have the right to form and participate in a resident council, and families of residents have the right to form a family council, to discuss alleged grievances, facility operation, ~~resident residents'~~ **residents'** rights, or other problems and to participate in the resolution of these matters as follows:

- (1) Participation is voluntary.
- (2) During resident or family council meetings, privacy shall be afforded to the extent practicable unless a member of the staff is invited by the resident council to be present.
- (3) The licensee shall provide space within the facility for meetings and assistance to residents or families who desire to attend meetings.
- (4) The facility shall develop and implement policies for investigating and responding to complaints when made known and grievances made by:
 - (A) an individual resident;
 - (B) a resident council ~~and/or~~ **or** family council, **or both**;

- (C) a family member;
- (D) family groups; or
- (E) other individuals.

(p) Residents have the right to the examination of the results of the most recent annual survey of the facility conducted by the state surveyors, and any plan of correction in effect with respect to the facility, and any subsequent surveys.

(q) Residents have the right to appropriate housing assignments as follows:

- (1) When both husband and wife are residents in the facility, they have the right to live as a family in a suitable room or quarters and may occupy a double bed unless contraindicated for medical reasons by the attending physician.
- (2) Written facility policy and procedures shall address the circumstances in which persons of the opposite sex, other than husband and wife, will be allowed to occupy a bedroom, if such an arrangement is agreeable to the residents or the residents' legal representatives.

(r) The transfer and discharge rights of residents of a facility are as follows:

(1) As used in this section, "interfacility transfer and discharge" means the movement of a resident to a bed outside of the licensed facility.

(2) As used in this section, "intrafacility transfer" means the movement of a resident to a bed within the same licensed facility.

(3) When a transfer or discharge of a resident is proposed, whether intrafacility or interfacility, provision for continuity of care shall be provided by the facility.

(4) Health facilities must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless:

- (A) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (B) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (C) the safety of individuals in the facility is endangered;
- (D) the health of individuals in the facility would otherwise be endangered;
- (E) the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or
- (F) the facility ceases to operate.

(5) When the facility proposes to transfer or discharge a resident under any of the circumstances specified in subdivision (4)(A), (4)(B), (4)(C), (4)(D), or (4)(E), the resident's clinical records must be documented. The documentation must be made by the following:

(A) The resident's physician when transfer or discharge is necessary under subdivision (4)(A) or (4)(B).

(B) Any physician when transfer or discharge is necessary under subdivision (4)(D).

(6) Before an interfacility transfer or discharge occurs, the facility must, on a form prescribed by the department, do the following:

(A) Notify the resident of the transfer or discharge and the reasons for the move, in writing, and in a language and manner that the resident understands. The health facility must place a copy of the notice in the resident's clinical record and transmit a copy to the following:

- (i) The resident.
- (ii) A family member of the resident if known.
- (iii) The resident's legal representative if known.
- (iv) The local long term care ombudsman program (for involuntary relocations or discharges only).
- (v) The person or agency responsible for the resident's placement, maintenance, and care in the facility.
- (vi) In situations where the resident is developmentally disabled, the regional office of the division of disability, aging, and rehabilitative services, who may assist with placement decisions.
- (vii) The resident's physician when the transfer or discharge is necessary under subdivision (4)(C), (4)(D), (4)(E), or (4)(F).

(B) Record the reasons in the resident's clinical record.

(C) Include in the notice the items described in subdivision (9).

(7) Except when specified in subdivision (8), the notice of transfer or discharge required under subdivision (6) must be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(8) Notice may be made as soon as practicable before transfer or discharge when:

- (A) the safety of individuals in the facility would be endangered;
- (B) the health of individuals in the facility would be endangered;
- (C) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

- (D) an immediate transfer or discharge is required by the resident's urgent medical needs; or
 - (E) a resident has not resided in the facility for thirty (30) days.
- (9) For health facilities, the written notice specified in subdivision (7) must include the following:
- (A) The reason for transfer or discharge.
 - (B) The effective date of transfer or discharge.
 - (C) The location to which the resident is transferred or discharged.
 - (D) A statement in not smaller than 12-point bold type that reads, "You have the right to appeal the health facility's decision to transfer you. If you think you should not have to leave this facility, you may file a written request for a hearing with the Indiana state department of health postmarked within ten (10) days after you receive this notice. If you request a hearing, it will be held within twenty-three (23) days after you receive this notice, and you will not be transferred from the facility earlier than thirty-four (34) days after you receive this notice of transfer or discharge unless the facility is authorized to transfer you under subdivision (8). If you wish to appeal this transfer or discharge, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Indiana state department of health at the number listed below."
 - (E) The name of the director and the address, telephone number, and hours of operation of the division.
 - (F) A hearing request form prescribed by the department.
 - (G) The name, address, and telephone number of the state and local long term care ombudsman.
 - (H) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.
- (10) If the resident appeals the transfer or discharge, the health facility may not transfer or discharge the resident within thirty-four (34) days after the resident receives the initial transfer or discharge notice unless an emergency exists as provided under subdivision (8).
- (11) If nonpayment is the basis of a transfer or discharge, the resident shall have the right to pay the balance owed to the facility up to the date of the transfer or discharge and then is entitled to remain in the facility.
- (12) The department shall provide a resident who wishes to appeal the transfer or discharge from a facility the opportunity to file a request for a hearing postmarked within ten (10) days following the resident's receipt of the written notice of the transfer or discharge from the facility.
- (13) If a health facility resident requests a hearing, the department shall hold an informal hearing at the health facility within twenty-three (23) days from the date the resident receives the notice of transfer or discharge. The department shall attempt to give at least five (5) days' written notice to all parties prior to the informal hearing. The department shall issue a decision within thirty (30) days from the date the resident receives the notice. The health facility must convince the department by a preponderance of the evidence that the transfer or discharge is authorized under subdivision (4). If the department determines that the transfer is appropriate, the resident must not be required to leave the health facility within the thirty-four (34) days after the resident's receipt of the initial transfer or discharge notice unless an emergency exists under subdivision (8). Both the resident and the health facility have the right to administrative or judicial review under IC 4-21.5 of any decision or action by the department arising under this section. All hearings held de novo shall be held in the facility where the resident resides.
- (14) An intrafacility transfer can be made only if **the transfer is necessary for:**
- (A) ~~the transfer is necessary for~~ medical reasons as judged by the attending physician; or
 - (B) ~~the transfer is necessary for~~ the welfare of the resident or other persons.
- (15) If an intrafacility transfer is required, the resident must be given notice at least two (2) days before relocation, except when:
- (A) the safety of individuals in the facility would be endangered;
 - (B) the health of individuals in the facility would be endangered;
 - (C) the resident's health improves sufficiently to allow a more immediate transfer; or
 - (D) an immediate transfer is required by the resident's urgent medical needs.
- (16) The written notice of an intrafacility transfer must include the following:
- (A) Reasons for transfer.
 - (B) Effective date of transfer.
 - (C) Location to which the resident is to be transferred.
 - (D) Name, address, and telephone number of the local and state long term care ombudsman.
 - (E) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.
- (17) The resident has the right to relocate prior to the expiration of the two (2) ~~day~~ **days'** notice.
- (18) Prior to any interfacility or involuntary intrafacility relocation, the facility shall prepare a relocation plan to prepare the resident for relocation and to provide continuity of care. In nonemergency relocations, the planning process shall include a relocation planning conference to which the resident, his or her legal representative, family members, and physician shall be

invited. The planning conference may be waived by the resident.

(19) At the planning conference the resident's medical, psychosocial, and social needs with respect to the relocation shall be considered and a plan devised to meet these needs.

(20) The facility shall provide reasonable assistance to the resident to carry out the relocation plan.

(21) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(22) If the relocation plan is disputed, a meeting shall be held prior to the relocation with the administrator or his or her designee, the resident, and the resident's legal representative. An interested family member, if known, shall be invited. The purpose of the meeting shall be to discuss possible alternatives to the proposed relocation plan.

(23) A written report of the content of the discussion at the meeting and the results of the meeting shall be reviewed by:

(A) the administrator or his or her designee;

(B) the resident;

(C) the resident's legal representative; and

(D) an interested family member, if known;

each of whom may make written comments on the report.

(24) The written report of the meeting shall be included in the resident's permanent record.

(s) Residents have the right to have reasonable access to the use of the telephone for local or toll free calls for emergency and personal use where calls can be made without being overheard.

(t) Residents have the right to manage their personal affairs and funds. When the facility manages these services, a resident may, by written request, allow the facility to execute all or part of their financial affairs. Management does not include the safekeeping of personal items. If the facility agrees to manage the resident's funds, the facility must:

(1) provide the resident with a quarterly accounting of all financial affairs handled by the facility;

(2) provide the resident, upon the resident's request, with reasonable access, during normal business hours, to the written records of all financial transactions involving the individual resident's funds;

(3) provide for a separation of resident and facility funds;

(4) return to the resident, upon written request and within no later than fifteen (15) calendar days, all or any part of the resident's funds given the facility for safekeeping;

(5) deposit, unless otherwise required by federal law, any resident's personal funds in excess of one hundred dollars (\$100) in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts and that credits all interest earned on the resident's funds to his or her account (in pooled accounts, there must be a separate accounting for each resident's share);

(6) maintain resident's personal funds that do not exceed one hundred dollars (\$100) in a noninterest-bearing account, interest-bearing account, or petty cash fund;

(7) establish and maintain a system that assures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf;

(8) provide the resident or the resident's legal representative with reasonable access during normal business hours to the funds in the resident's account;

(9) provide the resident or the resident's legal representative upon request with reasonable access during normal business hours to the written records of all financial transactions involving the individual resident's funds;

(10) provide to the resident or his or her legal representative a quarterly statement of the individual financial record and provide to the resident or his or her legal representative a statement of the individual financial record upon the request of the resident or the resident's legal representative; and

(11) convey, within thirty (30) days of the death of a resident who has personal funds deposited with the facility, the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

(u) Residents have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(v) Residents have the right to be free from:

(1) sexual abuse;

(2) physical abuse;

(3) mental abuse;

- (4) corporal punishment;
- (5) neglect; and
- (6) involuntary seclusion.

(w) Residents have the right to be free from verbal abuse.

(x) Residents have the right to confidentiality of all personal and clinical records. Information from these sources shall not be released without the resident's consent, except when the resident is transferred to another health facility, when required by law, or under a third party payment contract. The resident's records shall be made immediately available to the resident for inspection, and the resident may receive a copy within five (5) working days, at the resident's expense.

(y) Residents have the right to be treated as individuals with consideration and respect for their privacy. Privacy shall be afforded for at least the following:

- (1) Bathing.
- (2) Personal care.
- (3) Physical examinations and treatments.
- (4) Visitations.

(z) Residents have the right to:

- (1) refuse to perform services for the facility;
- (2) perform services for the facility, if he or she chooses, when:
 - (A) the facility has documented the need or desire for work in the service plan;
 - (B) the service plan specifies the nature of the duties performed and whether the duties are voluntary or paid;
 - (C) compensation for paid duties is at or above the prevailing rates; and
 - (D) the resident agrees to the work arrangement described in the service plan.

(aa) Residents have the right to privacy in written communications, including the right to:

- (1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident; and
- (2) have access to stationery, postage, and writing implements at the resident's own expense.

(bb) Residents have the right and the facility must provide immediate access to any resident by:

- (1) individuals representing state or federal agencies;
- (2) any authorized representative of the state;
- (3) the resident's individual physician;
- (4) the state and area long term care ombudsman;
- (5) the agency responsible for the protection and advocacy system for developmentally disabled individuals;
- (6) the agency responsible for the protection and advocacy system for mentally ill individuals;
- (7) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
- (8) the resident's legal representative or spiritual advisor subject to the resident's right to deny or withdraw consent at any time;
- and
- (9) others who are visiting with the consent of the resident subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(cc) Residents have the right to choose with whom they associate. The facility shall provide reasonable visiting hours, which should include at least twelve (12) hours a day, and the hours shall be made available to each resident. Policies shall also provide for emergency visitation at other hours. The facility shall not restrict visits from the resident's legal representative or spiritual advisor, except at the request of the resident.

(dd) The facility shall provide reasonable access to any resident, consistent with facility policy, by any entity or individual that provides health, social, legal, and other services to any resident, subject to the resident's right to deny or withdraw consent at any time.

(ee) The facility shall allow representatives of the state ombudsman to examine a resident's clinical records with the permission

of the resident or the resident's legal representative and consistent with state law.

(ff) Residents have the right to participate in social, religious, community services, and other activities of their choice that do not interfere with the rights of other residents at the facility.

(gg) Residents have the right to individual expression through retention of personal clothing and belongings as space permits unless to do so would infringe upon the rights of others or would create a health or safety hazard.

(hh) The facility shall exercise reasonable care for the protection of residents' property from loss and theft. The administrator or his or her designee is responsible for investigating reports of lost or stolen resident property and that the results of the investigation are reported to the resident.

(ii) If the resident's personal laundry is laundered by the facility, the facility shall identify these items in a suitable manner at the resident's request.

(jj) Residents may use facility equipment, such as washing machines, if permitted by **the** facility.

(kk) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (u) or (v) is an offense;

(2) subsection (b), (c), (d), (j), (k), (n), (o)(4), (r), (w), (x), (y), (z), (aa), (bb), or (dd) is a deficiency;

(3) subsection (a), (e), (f), (g), (h), (i), (l), (o)(1), (o)(2), (o)(3), (p), (q), (s), (t), (cc), (ee), (ff), (gg), (hh), or (ii) is a noncompliance; and

(4) subsection (m) or (jj) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.2; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1562, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1914, eff Mar 1, 2003)

SECTION 9. 410 IAC 16.2-5-1.3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.3 Administration and management

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 12-10-5.5; IC 16-28-5-1; IC 25-19-1

Sec. 1.3. (a) The licensee is responsible for compliance with all applicable laws. The licensee has full authority and responsibility for the organization, management, operation, and control of the licensed facility. The delegation of any authority by the licensee does not diminish the responsibilities of the licensee.

(b) The licensee shall provide the number of staff as required to carry out all the functions of the facility, including the following:

(1) Initial orientation of all employees.

(2) A continuing inservice education and training program for all employees.

(3) Provision of supervision for all employees.

(c) The licensee shall appoint an administrator licensed ~~pursuant to~~ **under** IC 25-19-1 and delegate to that administrator the authority to organize and implement the day-to-day operations of the facility. The licensee, if a licensed administrator, may act as the administrator of the facility.

(d) The licensee shall notify the director within three (3) working days of a vacancy in the administrator's position. The licensee shall also notify the director of the name and license number of the replacement administrator.

(e) An administrator shall be employed to work in each licensed health facility. For purposes of this subsection, an individual can only be employed as an administrator in one (1) health facility or one (1) hospital-based long term care unit at a time.

(f) In the administrator's absence, an individual shall be authorized, in writing, to act on the administrator's behalf.

(g) The administrator is responsible for the overall management of the facility. The responsibilities of the administrator shall include, but are not limited to, the following:

(1) Informing the division within twenty-four (24) hours of becoming aware of an unusual occurrence that directly threatens the welfare, safety, or health of a resident. Notice of unusual occurrence may be made by telephone, followed by a written report, or by a written report only that is faxed or sent by electronic mail to the division within the twenty-four (24) hour time period. Unusual occurrences include, but are not limited to:

- (A) epidemic outbreaks;
- (B) poisonings;
- (C) fires; or
- (D) major accidents.

If the division cannot be reached, a call shall be made to the emergency telephone number published by the division.

(2) Promptly arranging for or assisting with the provision of medical, dental, podiatry, or nursing care or other health care services as requested by the resident or resident's legal representative.

(3) Obtaining director approval prior to the admission of an individual under eighteen (18) years of age to an adult facility.

(4) Ensuring the facility maintains, on the premises, an accurate record of actual time worked that indicates the employee's full name and the dates and hours worked during the past twelve (12) months.

(5) Posting the results of the most recent annual survey of the facility conducted by state surveyors, ~~and~~ any plan of correction in effect with respect to the facility, and any subsequent surveys. The results must be available for examination in the facility in a place readily accessible to residents and a notice posted of their availability.

(6) Maintaining reports of surveys conducted by the division in each facility for a period of two (2) years and making the reports available for inspection to any member of the public upon request.

(h) The facility shall establish and implement a written policy manual to ensure that resident care and facility objectives are attained, to include:

- (1) the range of services offered; ~~resident~~
- (2) ~~residents'~~ rights;
- (3) personnel administration; and
- (4) facility operations.

Such policies shall be made available to residents upon request.

(i) The facility must maintain a written fire and disaster preparedness plan to assure continuity of care of residents in cases of emergency as follows:

(1) Fire exit drills in facilities shall include the transmission of a fire alarm signal and simulation of emergency fire conditions, except that the movement of nonambulatory residents to safe areas or to the exterior of the building is not required. Drills shall be conducted quarterly on each shift to familiarize all facility personnel with signals and emergency action required under varied conditions. At least twelve (12) drills shall be held every year. When drills are conducted between 9 p.m. and 6 a.m., a coded announcement may be used instead of audible alarms.

(2) At least every six (6) months, a facility shall attempt to hold the fire and disaster drill in conjunction with the local fire department. A record of all training and drills shall be documented with the names and signatures of the personnel present.

(j) If professional or diagnostic services are to be provided to the facility by an outside resource, either individual or institutional, an arrangement shall be developed between the licensee and the outside resource for the provision of the services. If a written agreement is used, it shall specify:

- (1) the responsibilities of both the facility and the outside resource;
- (2) the qualifications of the outside resource staff;
- (3) a description of the type of services to be provided, including action taken and reports of findings; and
- (4) the duration of the agreement.

(k) The facility shall conspicuously post the license or a true copy thereof within the facility in a location accessible to public view.

(l) In facilities that are required under IC 12-10-5.5 to submit an Alzheimer's and dementia special care unit disclosure form, the facility must designate a director for the Alzheimer's and dementia special care unit. The director shall have an earned degree from an educational institution in a health care, mental health, or social service profession or be a licensed health care professional. The director shall have a minimum of one (1) year work experience with dementia or Alzheimer's

residents, or both, within the past five (5) years. Persons serving as a director for an existing Alzheimer's and dementia special care unit at the time of adoption of this rule are exempt from the degree and experience requirements. The director shall have a minimum of twelve (12) hours of dementia-specific training within three (3) months of initial employment and six (6) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

(m) The director of the Alzheimer's and dementia care unit shall do the following:

(1) Oversee the operation of the unit.

(2) Ensure that personnel assigned to the unit receive required inservice training.

(3) Ensure that care provided to Alzheimer's and dementia care unit residents is consistent with inservice training, current Alzheimer's and dementia care practices, and regulatory standards.

⊕ **(n)** For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a), ~~or~~ (g), **or** (m) is a deficiency;

(2) subsection (b), (c), (d), (e), (f), (h), (i), ~~or~~ (j), **or** (l) is a noncompliance; and

(3) subsection (k) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.3; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1565, eff Apr 1, 1997; errata filed Jan 10, 1997, 4:00 p.m.: 20 IR 1593; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1919, eff Mar 1, 2003)

SECTION 10. 410 IAC 16.2-5-1.4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.4 Personnel

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 1.4. (a) Each facility shall have specific procedures written and implemented for the screening of prospective employees. Appropriate inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) Staff shall be sufficient in number, qualifications, and training in accordance with applicable state laws and rules to meet the twenty-four (24) hour scheduled and unscheduled needs of the residents and services provided. The number, qualifications, and training of staff shall depend on skills required to provide for the specific needs of the residents. A minimum of one (1) awake staff person, with current CPR and first aid certificates, shall be on site at all times. If fifty (50) or more residents of the facility regularly receive residential nursing services ~~and/or~~ **or** administration of medication, **or both**, at least one (1) nursing staff person shall be on site at all times. Residential facilities with over one hundred (100) residents regularly receiving residential nursing services ~~and/or~~ **or** administration of medication, **or both**, shall have at least one (1) additional nursing staff person awake and on duty at all times for every additional fifty (50) residents. Personnel shall be assigned only those duties for which they are trained to perform. Employee duties shall conform with written job descriptions.

(c) Any unlicensed employee providing more than limited assistance with the activities of daily living must be either a certified nurse aide or a home health aide. Existing facilities that are not licensed on the date of adoption of this rule and that seek licensure within one (1) year of adoption of this rule have two (2) months in which to ensure that all employees in this category are either a certified nurse aide or a home health aide.

(d) Prior to working independently, each employee shall be given an orientation to the facility by the supervisor (or his or her designee) of the department in which the employee will work. Orientation of all employees shall include the following:

(1) Instructions on the needs of the specialized populations: ~~served in the facility~~

(A) aged;

(B) developmentally disabled;

(C) mentally ill;

(D) dementia; or

(E) children;

served in the facility.

- (2) A review of the facility's policy manual and applicable procedures, including:
 - (A) organization chart;
 - (B) personnel policies;
 - (C) appearance and grooming policies for employees; and
 - (D) residents' rights.
- (3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures.
- (4) Review of ethical considerations and confidentiality in resident care and records.
- (5) For direct care staff, personal introduction to, and instruction in, the particular needs of each resident to whom the employee will be providing care.
- (6) Documentation of the orientation in the employee's personnel record by the person supervising the orientation.

(e) There shall be an organized inservice education and training program planned in advance for all personnel in all departments at least annually. Training shall include, but is not limited to, residents' rights, prevention and control of infection, fire prevention, safety, ~~and~~ accident prevention, the needs of specialized populations served, medication administration, and nursing care, when appropriate, as follows:

- (1) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel. For nursing personnel, this shall include at least eight (8) hours of inservice per calendar year and four (4) hours of inservice per calendar year for nonnursing personnel.
- (2) In addition to the above required inservice hours, ~~in facilities with distinct dementia units~~, staff who have contact with ~~such~~ residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months and three (3) hours annually thereafter to meet the needs **or** preferences, **or both**, of cognitively impaired residents effectively and to gain understanding of the current standards of care for residents with dementia.
- (3) Inservice records shall be maintained and shall indicate the following:
 - (A) Time, date, and location.
 - (B) Name of instructor.
 - (C) Title of instructor.
 - (D) Name of participants.
 - (E) Program content of inservice.

The employee will acknowledge attendance by written signature.

(f) A health screen shall be required for each employee of a facility prior to resident contact. The screen shall include a tuberculin skin test, using the Mantoux method (5 TU, PPD), unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The facility must assure the following:

- (1) At the time of employment, or within one (1) month prior to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. The first tuberculin skin test must be read prior to the employee starting work. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency of repeat testing will depend on the risk of infection with tuberculosis.
- (2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.
- (3) The facility shall maintain a health record of each employee that includes reports of all employment-related health screenings.
- (4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(g) The facility must prohibit employees with communicable disease or infected skin lesions from direct contact with residents or their food if direct contact will transmit the disease. An employee with signs and symptoms of communicable disease, including, but not limited to, an infected or draining skin lesion, shall be handled according to a facility's policy regarding direct contact with residents, their food, or resident care items until the condition is resolved. Persons with suspected or proven active tuberculosis will not be permitted to work until determined to be noninfectious and documentation is provided for the employee record.

(h) The facility shall maintain current and accurate personnel records for all employees. The personnel records for all employees shall include the following:

- (1) Name and address of employee.
- (2) Social Security number.
- (3) Date of beginning employment.
- (4) Past employment, experience, and education, if applicable.
- (5) Professional licensure or registration number, if applicable.
- (6) Position in the facility and job description.
- (7) Documentation of orientation to the facility, including residents' rights, and to the specific job skills.
- (8) Signed acknowledgment of orientation to residents' rights.
- (9) Performance evaluations in accordance with facility policy.
- (10) Date and reason for separation.

(i) The employee personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

- (j) For purposes of IC 16-28-5-1, a breach of:
- (1) subsection (b), (c), or (g) is a deficiency;
 - (2) subsection (a), (d), (e), or (f) is a noncompliance; and
 - (3) subsection (h) or (i) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.4; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1567, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1921, eff Mar 1, 2003)

SECTION 11. 410 IAC 16.2-5-2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-2 Evaluation

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1

Sec. 2. (a) An evaluation of the individual needs of each resident shall be initiated prior to admission and shall be updated at least semiannually and upon a known substantial change in the resident's condition, or more often at the resident's or facility's request. A licensed nurse shall evaluate the nursing needs of the resident.

(b) The preadmission evaluation (interview) shall provide the baseline information for the initial evaluation. Subsequent evaluations shall compare the resident's current status to his or her status on admission and shall be used to assure that the care the resident requires is within the range of personal care and supervision provided by a residential care facility.

(c) The scope and content of the evaluation shall be delineated in the facility policy manual, but at a minimum the needs assessment shall include an evaluation of the following:

- (1) The resident's physical, **cognitive**, and mental status.
- (2) The resident's independence in the activities of daily living.
- (3) The resident's weight taken on admission and semiannually thereafter.
- (4) If applicable, the resident's ability to self-administer medications.

(d) The evaluation shall be documented in writing and kept in the facility.

(e) Following completion of an evaluation, the facility, using appropriately trained staff members, shall identify and document the services to be provided by the facility, as follows:

- (1) The services offered to the individual resident shall be appropriate to the:

- (A) scope;
- (B) frequency;
- (C) need; and
- (D) preference;

of the resident.

- (2) The services offered shall be reviewed and revised as appropriate and discussed by the resident and facility as needs or desires

change. Either the facility or the resident may request a service plan review.

(3) The agreed upon service plan shall be signed and dated by the resident, and a copy of the service plan shall be given to the resident upon request.

(4) No identification and documentation of services provided is needed if evaluations subsequent to the initial evaluation indicate no need for a change in services.

(5) If administration of medications ~~and/or~~ **or** the provision of residential nursing services, **or both**, is needed, a licensed nurse shall be involved in identification and documentation of the services to be provided.

(f) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a), (b), or (e) is a deficiency; and

(2) subsection (c) or (d) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-5-2; filed May 2, 1984, 2:50 p.m.: 7 IR 1497; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1575, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1929, eff Mar 1, 2003)

SECTION 12. 410 IAC 16.2-5-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-4 Health services

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1

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

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

~~(b)~~ **(c) Each facility shall choose whether or not it administers medication ~~and/or~~ **or** provides residential nursing care, **or both**.** These policies shall be delineated in the facility policy manual and clearly stated in the admission agreement.

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

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

(1) Medication shall be administered by licensed nursing personnel or qualified medication aides.

(2) The resident shall be observed for effects of medications. Documentation of any undesirable effects shall be contained in the clinical record. The physician shall be notified immediately if undesirable effects occur, and such notification shall be documented in the clinical record.

(3) The individual administering the medication shall document the administration in the individual's medication and treatment records that indicate the:

(A) time;

(B) name of medication or treatment;

(C) dosage (if applicable); and

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

(4) Preparation of doses for more than one (1) scheduled administration is not permitted.

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

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

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

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

~~(f)~~ **(g) For purposes of IC 16-28-5-1, a breach of:**

- (1) subsection ~~(d)(1)~~, ~~(d)(2)~~, **(e)(1)**, **(e)(2)**, or ~~(d)(5)~~ **(e)(5)** is an offense;
- (2) subsection (a), ~~(e)~~, ~~(d)(3)~~, ~~(d)(6)~~, ~~(d)(7)~~, **(d)**, **(e)(3)**, **(e)(6)**, **(e)(7)**, or ~~(e)~~ **(f)** is a deficiency;
- (3) subsection ~~(d)(4)~~ **(e)(4)** is a noncompliance; and
- (4) subsection ~~(b)~~ **(c)** is a nonconformance.

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

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 22, 2004 at 2:00 p.m., at the Indiana State Department of Health Building, 2 North Meridian Street, Yoho Board Room, 3rd Floor, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed amendments concerning comprehensive and residential care health facilities, a definition of cognitive, additional inservice educational requirements of facility personnel, qualifications for a director of an Alzheimer's and dementia special care unit, facilities providing a resident a copy of the Alzheimer's and dementia care unit disclosure form, and resident behavior and facility practices, health services, and residents' rights. Copies of these rules are now on file at the Health Care Regulatory Services Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health