

**TITLE 460 DIVISION OF DISABILITY, AGING, AND
REHABILITATIVE SERVICES**

Proposed Rule
LSA Document #04-136

DIGEST

Adds 460 IAC 1-11 to provide for the posting of notices at housing with services establishments, area agencies on aging, and centers for independent living that advise residents of their rights, and for procedures for residents and their representatives to file complaints concerning violations of filing disclosure requirements. Effective 30 days after filing with the secretary of state.

460 IAC 1-11

SECTION 1. 460 IAC 1-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. Posting of Notices

460 IAC 1-11-1 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-9-1-1; IC 12-10-1-4; IC 12-10-5-2; IC 12-10-15; IC 12-12-8-1

Sec. 1. (a) "Administrator" means the natural person who:

- (1) administers;**
 - (2) manages;**
 - (3) supervises; or**
 - (4) is in general administrative charge of;**
- a housing with services establishment.**

(b) "Area agency on aging" means the agency designated by the bureau of aging and in-home services in each planning and service area under IC 12-10-1-4(18).

(c) "Centers for independent living" means a consumer controlled, community based, cross-disability, nonresidential, private nonprofit agency that:

- (1) is designed and operated within a local community by individuals with disabilities; and**
- (2) provides an array of independent living services.**

(d) "Director" means the director of the division.

(e) "Division" means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1.

(f) "Housing with services establishment" or "establishment" means a facility providing sleeping accommodations to at least five (5) residents and offering or providing for a fee at least:

- (1) one (1) regularly scheduled health related service as defined in IC 12-10-15-2; or**
- (2) two (2) regularly scheduled supportive services;**

whether offered or provided directly by the establishment or by another person arranged for by the establishment.

(g) "Operator" means a person that operates a housing with services establishment.

(h) "Resident" means an individual who has a contract to reside in a housing with services establishment.

(i) “Supportive services” means help with personal laundry, handling or assisting with personal funds of the residents, or arranging for medical services, health related services, or social services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-1)*

460 IAC 1-11-2 Requirement to post notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-10-15

Sec. 2. Each housing with services establishment, center for independent living, and area agency on aging shall post a notice that advises residents of a housing with services establishment of their rights under IC 12-10-15. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-2)*

460 IAC 1-11-3 Rights to be included in notice

Authority: IC 12-8-4-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-10-15; IC 16-27-1-5; IC 16-28

Sec. 3. The notice required by section 2 of this rule shall advise residents of housing with services establishments of the following rights:

(1) That each resident, or the resident’s representative, must be given:

- (A) a complete copy of the contract between the establishment and the resident or the resident’s representative;
- (B) all supporting documents and attachments; and
- (C) any changes whenever changes are made.

(2) That the housing with services establishment contract must include the following elements in the contract or through supporting documents or attachments in clear and understandable language:

- (A) The name, street address, and mailing address of the establishment.
- (B) The name and mailing address of the owner or owners of the establishment and, if the owner or owners are not natural persons, identification of the type of business entity of the owner or owners.
- (C) The name and mailing address of the managing agency, through management agreement or lease arrangement, of the establishment, if different from the owner or owners.
- (D) A statement describing the disclosure document and licensure status, if any, of the establishment and any person providing health related services or supportive services under arrangement with the operator.
- (E) The term of the contract.
- (F) A description of the services to be provided to the resident in the base rate to be paid by the resident or on the resident’s behalf.
- (G) A description of any additional services available for an additional fee from the establishment directly or through arrangements with the establishment.
- (H) The fee schedules outlining the cost of any additional services.
- (I) A description of the process through which the contract may be modified, amended, or terminated.
- (J) A description of the establishment’s complaint resolution process available to the residents.
- (K) The resident’s designated representative, if any.
- (L) The establishment’s referral procedures if the contract is terminated.
- (M) The criteria used by the establishment to determine who may continue to reside in the establishment. That criteria must address the following:
 - (i) When a resident must be transferred because the establishment and the resident are unable to develop a means for assuring that the resident is able to respond to an emergency in a manner that is consistent with local fire and safety requirements.
 - (ii) When the establishment is unable to assure that the resident’s physical, mental, and psychosocial needs can be met.
- (N) A description of the process for assuring that the resident’s needs are assessed on admission and periodically thereafter in conjunction with the resident and the resident’s representative and for assuring that the resident’s physical, mental, and psychosocial needs are met within the terms of the contract criteria for residence provided under clause (M).
- (O) The billing and payment procedures and requirements.

(3) That an establishment’s contract must state that:

- (A) except as stated in the contract, residency in the establishment may not be terminated due to a change in the resident’s health or care needs;
- (B) the ability of a resident to engage in activities away from the establishment regardless of time, duration, and distance

of the activities may not be restricted;

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

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

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

(ii) require a resident to use home health services as defined in IC 16-27-1-5.

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

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-3)

460 IAC 1-11-4 Location of notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-10-15

Sec. 4. (a) Each area agency on aging shall post a notice or notices in areas accessible to consumers, including, but not limited to, the following:

(1) Corporate waiting rooms.

(2) Senior centers.

(3) Meal sites.

(b) Each center for independent living shall post a notice or notices in each building, wing, floor, or common area that is open and available to residents and family members at any time.

(c) Each establishment shall post a notice or notices in each building, wing, floor, or common area that is open and available to residents and family members at any time. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-4)*

460 IAC 1-11-5 Format of notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-10-15

Sec. 5. (a) The notice or notices shall be in a language appropriate for the individuals residing in the facility or frequenting AAA sites.

(b) The format and the wording of the notice shall be approved by the division.

(c) The posting shall include contact information for the local and state long term care ombudsman. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-5)*

460 IAC 1-11-6 Filing of complaints by residents; investigation; resolution

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-10-13; IC 12-10-15

Sec. 6. (a) A complaint may be filed by a resident or on behalf of a resident with the local long term care ombudsman or state long term care ombudsman, or both, regarding an establishment's violation of a requirement contained in IC 12-10-15 or this rule, or both.

(b) The local long term care ombudsman or state long term care ombudsman, or both, shall perform an investigation into the allegations of the complaint.

(c) If the complaint is substantiated after investigation, the local long term care ombudsman or state long term care ombudsman, or both, will work with the facility to correct the problem.

(d) If the problem is resolved and remains resolved, the problem, condition, or incident will not be reflected on the

establishment's record in the division.

(e) If the problem is not resolved, the complaint shall be referred to the director for appropriate action and will become public record. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-6)*

460 IAC 1-11-7 Response by establishment to a complaint

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-10-13; IC 12-10-15

Sec. 7. If a complaint by a resident or a resident's representative regarding an establishment's violation of a requirement contained in IC 12-10-15 or this rule, or both, is forwarded to the director, the director shall send a copy of the complaint to the establishment against which a complaint has been filed. The establishment shall have fifteen (15) days in which to file a response with the director. The director may, if necessary, require additional information from or investigation of the establishment. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-7)*

460 IAC 1-11-8 Imposition of penalty

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14

Affected: IC 12-10-15

Sec. 8. (a) If the director finds that an establishment has violated a requirement contained in IC 12-10-15, the director shall impose a penalty of one hundred dollars (\$100) per day for each requirement that has been violated.

(b) If the establishment has been found to have had two (2) or more violations within the previous two (2) years, the director may impose a fine of a minimum of two hundred dollars (\$200) per day for each requirement that has been violated.

(c) A fine will be imposed beginning from the time the complaint is verified by the long term care ombudsman until such time as the violation is corrected.

(d) The total penalty for each violation may not exceed ten thousand dollars (\$10,000). *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-8)*

460 IAC 1-11-9 Administrative review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 4-21.5-3-7; IC 12-11-1.1; IC 12-11-2.1

Sec. 9. (a) A person who is aggrieved by a penalty imposed under this rule may request review under IC 4-21.5-3-7.

(b) To qualify for administrative review of a penalty imposed under this rule, a person shall file a written petition for review that does the following:

(1) States facts demonstrating that the person is:

(A) a person to whom the action is specifically directed;

(B) aggrieved or adversely affected by the action; or

(C) entitled to review under any law.

(2) Is filed with the director of the division within fifteen (15) days after the person receives notice of the agency action or determination.

(c) Administrative review shall be conducted in accordance with IC 4-21.5.

(d) If a request for a hearing is not filed within fifteen (15) days after the penalty is imposed, the determination of the director and the penalty are final. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-9)*

460 IAC 1-11-10 Substantial and repeated violations

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 4-21.5-3-7; IC 12-10-15; IC 12-11-1.1; IC 12-11-2.1

Sec. 10. (a) If the director determines that an establishment has had substantial and repeated violations of the requirements contained in IC 12-10-15, the director may prohibit an establishment from using the term “assisted living” to describe the establishment’s services and operations to the public.

(b) An establishment that is aggrieved by a penalty imposed under this rule may request review under IC 4-21.5-3-7.

(c) To qualify for administrative review of a penalty imposed under this rule, an establishment shall file a written petition for review that does the following:

(1) States facts demonstrating that the establishment is:

(A) an establishment to whom the action is specifically directed;

(B) aggrieved or adversely affected by the action; or

(C) entitled to review under any law.

(2) Is filed with the director of the division within fifteen (15) days after the establishment receives notice of the agency action or determination.

(d) Administrative review shall be conducted in accordance with IC 4-21.5. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-10*)

460 IAC 1-11-11 Intentional violations

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 4-21.5; IC 12-10-15; IC 12-11-1.1; IC 12-11-2.1

Sec. 11. If the director determines that an operator or administrator of an establishment has intentionally violated the requirements contained in IC 12-10-15, or has made fraudulent and material misrepresentations to a resident, the director may request the attorney general to investigate and take appropriate action against the operator or administrator. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-11*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 22, 2004 at 9:15 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W451 Conference Room A, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on a proposed new rule at 460 IAC 1-11 concerning the posting of notices at housing with services establishments, area agencies on aging, and centers for independent living that advise residents of their rights and providing procedures for residents and their representatives to file complaints concerning violations of filing disclosure requirements. If an accommodation is required to allow an individual with a disability to participate in this meeting, please contact Kevin Wild at (317) 233-2582 at least 48 hours prior to the meeting. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Rachel McGeever
General Counsel
Division of Disability, Aging, and Rehabilitative Services