TITLE 410 INDIANA DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #

DIGEST

Amends 410 IAC 16.2-5 regarding resident rights in residential care facilities. Effective 30 days after filing with the Publisher.

SECTION 1. 410 IAC 16.2-5-0.5 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-0.5 Scope of residential care facilities

Authority: IC 16-28-1-7
Affected: IC 16-28-2; IC 16-28-5-1; IC 32-31-5-6; IC 32-31-8-5

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

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

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

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

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

(f) **A residential care facility must effectuate a rental agreement or residency agreement with the resident which shall provide that the resident has all rights enumerated in 410 IAC 16.2-5-1.2 and all rights set forth in IC 32-31-5-6 and IC-32-31-8-5.**

(g) ~~The resident must be discharged~~ **Notwithstanding the provisions of section (f), a residential care facility may take action to evict a resident or terminate a rental agreement or residency agreement** if the ~~resident~~:(1) **resident** is a danger to ~~the resident~~ **themself** or others;

~~(2) requires twenty-four (24) hour per day comprehensive nursing care or comprehensive nursing oversight;~~

~~(3)~~ **(2) resident** requires ~~less than twenty-four (24) hour per day~~ comprehensive nursing care, comprehensive nursing oversight, or rehabilitative therapies and has not entered into a contract with an appropriately licensed provider of the resident's choice to provide those services;

~~(4) is not medically stable; or~~

~~(5)~~ **(3) resident** meets at least two (2) of the following three (3) criteria unless the resident is ~~medically stable and~~ **capable of contracting outside services to meet their needs or** the health facility can meet the resident's needs:

(A) Requires total assistance with eating.
(B) Requires total assistance with toileting.
(C) Requires total assistance with transferring.

(4) resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility;
(5) resident has breached a material term of their resident agreement or rental agreement; or
(6) residential care facility ceases to operate.

~~(g)~~ **(h) Upon receiving an eviction notice, a resident may file a request for hearing with the department. The hearing shall be conducted by the department or its designee to determine whether eviction is authorized under this rule.**

(i) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a), ~~or~~ (b) **or (f)** is an offense; and
(2) subsection (c), (d), (e), or (~~f~~**g**) is a deficiency.

(Indiana Department of Health; 410 IAC 16.2-5-0.5; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1911, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 2. 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
Affected: IC 4-21.5; IC 12-10-5.5; IC 12-10-15-9; IC 16-28-5-1; IC 32-31-5-6; IC 32-31-8-5.

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 shall have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community.** 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, **unless ordered by a physician**;
(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~~ **the resident's** physician to be medically incapable of understanding or exercising ~~his or her~~ **the resident's** 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~~ **the rental** agreement **or resident 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~~ **rental** agreement **or resident 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 **and shall comply with IC 32-31-5-6 and IC 32-31-8-5**.

(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~~

(~~g~~f) 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.

(~~hg~~) 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~~ **the resident's** 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 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~~ **the resident's** 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~~ **the resident's** clinical record if treatment or medication is administered by the facility.

(6) Have visitors of the resident's choosing at any time without prior approval, subject to any house rules established under subsection (cc). House rules may not conflict with the resident's resident agreement or rental agreement so long as the rental agreement complies with this rule and 42 CFR Parts 430-456.

(7) Have access to food at any time.

(8) Have full access to and from their unit and common areas, free from gates, locked doors, or other barriers.

(9) Have the ability to exit and enter the residence without curfew or other restriction with 24-hour access via key, door code or the like. If the access provided requires staff to provide after-hours access, the facility must always have staff available who can provide entry without the need for the resident to provide advance notice of intent to exit or enter.

(10) Have optimized individual initiative, autonomy, and independence in making life choices, including the right to self- administer medication, absent a physician order to the contrary or request by the resident to have the facility administer medications. The service plan shall document the resident's decision to self- administer medication, any physician order to the contrary, and any request by the resident for the facility to administer medication.

~~(6)~~ **(11)** Be afforded confidentiality of treatment**, including in the maintenance and distribution of medication**.

~~(7)~~ **(12)** Participate or refuse to participate in experimental research. There must be written acknowledgement of informed consent prior to participation in research activities.

(13) Any restrictions of a resident's rights listed in subsection (j) must be fully documented in the person-centered service plan with supporting documentation from their physician and written approval of the resident or the resident's legal representative.

(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 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~~ **ensure that the resident is able to meet any prospective roommate and make an informed choice pertaining to the choice of a roommate, including the right to refuse a specific roommate**.

~~———~~ (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, 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 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, 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~~ **spouses** 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~~ **undergoing an eviction proceeding have the following rights**:

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

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

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

(4) Health facilities must **ensure an appropriate rental agreement or resident agreement is in place which** ~~permit~~ **permits** each resident to remain in the facility and not ~~transfer or discharge~~ **evict** 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;~~

(A) the resident is a danger to the resident or others;

(B) the resident requires comprehensive nursing care, comprehensive nursing oversight, or rehabilitative therapies and has not entered into a contract with an appropriately licensed provider of the resident's choice to provide those services; or

(C) the resident meets at least two (2) of the following three (3) criteria, unless the resident is medically stable and capable of contracting outside services to meet their needs or the health facility can meet the resident's needs:

(1) The resident requires total assistance with eating.

(2) The resident requires total assistance with toileting.

(3) The resident requires total assistance with transferring.

~~(E)~~ **(D)** the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility;

(E) the resident has breached the material terms of their rental agreement or resident agreement; or

~~**(E)**~~ **(F)** the facility ceases to operate.

(5) When the facility proposes to ~~transfer or discharge~~ **evict** a resident under any of the circumstances specified in subdivision (4)(A), (4)(B), **or** (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~~ **eviction** is necessary under subdivision (4)(A), (4)(B) **or 4(C)**.

(B) Any physician when ~~transfer or discharge~~ **eviction** is necessary under subdivision (4)(~~D~~**A**) **and the facility has made a good faith attempt to contact the resident's physician but has been unable to do so.**

(6) Before an interfacility **eviction** ~~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~~ **intent to evict** 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 **Bureau of Disabilities Services** ~~regional~~ **district** 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~~ **eviction** is necessary under subdivision (4)(**A**~~C~~), (4)(**B**~~D~~), or (4)(~~E~~**C**)~~, or (4)(F).~~

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

(C) Include in the notice the items described in subdivision ~~(9)~~**(8)**~~.~~

(7) Except when specified in subdivision ~~(8)~~**(24)**, the notice of ~~transfer or discharge~~ **eviction** 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~~ **eviction**~~;~~ ~~or~~

~~(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~~**8**) For health facilities, the written notice specified in subdivision (7) must include the following:

(A) The reason for ~~transfer or discharge~~ **eviction**.

(B) The effective date of ~~transfer or discharge~~ **eviction**.

(C) The location to which the resident is ~~transferred or discharged~~ **evicted**.

(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~~ **evict** you. If you think you should not have to leave this facility, you may file a written request for a hearing with the Indiana 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~~ **eviction** unless the facility is authorized to transfer you under subdivision (8). If you wish to appeal this ~~transfer or discharge~~ **eviction**, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Indiana 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~~ **9**) If the resident appeals the transfer or discharge, the health facility may not ~~transfer or discharge~~ **evict** the resident within thirty-four (34) days after the resident receives the initial ~~transfer or discharge~~ **eviction** notice unless an emergency exists as provided under subdivision (8).

(~~11~~ 1**0**) If nonpayment is the basis of a**n eviction** ~~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~~ **eviction** and then is entitled to remain in the facility.

(~~12~~ **11**) The department shall provide a resident who wishes to appeal the ~~transfer or discharge~~ **eviction** 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~~ **eviction** from the facility.

(~~13~~ 1**2**) If a health facility resident requests a hearing, the department ~~shall~~ **or its designee shall** hold a~~n informal~~ hearing ~~at the health facility~~ within twenty-three (23) days from the date the resident receives the notice of **eviction** ~~transfer or discharge~~. The department **or its designee** shall attempt to give at least five (5) days' written notice to all parties prior to the ~~informal~~ hearing. **The hearing may be held virtually in a manner which ensures active participation by the parties**. The department **or its designee** 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~~ **eviction** is authorized under subdivision (4). If the department ~~determines~~ that the ~~transfer~~ **eviction** 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~~ **eviction** notice unless an emergency exists under subdivision ~~(8)~~**(24)**~~. 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 **or virtually in a manner which ensures active participation by the parties**.

(~~14~~**13**) An intrafacility ~~transfer~~ **eviction** can be made only if the ~~transfer~~ **eviction** is necessary for:

(A) medical reasons as judged by the attending physician; or

(B) the welfare of the resident or other persons.

(~~15~~**14**) If an intrafacility ~~transfer~~ **eviction** is required, the resident must be given notice at least two (2) days before ~~relocation~~ **eviction**, except when:

(A) the safety of individuals in the facility would be endangered;

(B) the health of individuals in the facility would be endangered; **or**

~~(C) the resident's health improves sufficiently to allow a more immediate transfer **eviction**; or~~

(~~D~~**C**) an immediate ~~transfer~~ **eviction** is required by the resident's urgent medical needs.

(1~~6~~**5**) The written notice of an intrafacility ~~transfer~~ **eviction** must include the following:

(A) Reasons for ~~transfer~~ **eviction**.

(B) Effective date of ~~transfer~~ **eviction**.

(C) Location to which the resident is to be ~~transferred~~ **evicted**.

(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~~ **16**) The resident has the right to relocate prior to the expiration of the two (2) days' notice.

(~~18~~**17**) Prior to any interfacility or involuntary intrafacility ~~relocation~~ **eviction**, 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~~**18**) 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~~**19**) The facility shall provide reasonable assistance to the resident to carry out the relocation plan.

(~~21~~**20**) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly ~~transfer or discharge~~ **eviction** from the facility.

(~~22~~**21**) 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~~**22**) 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~~**23**) The written report of the meeting shall be included in the resident's permanent record.

(24) A health facility may request an emergency eviction hearing and give the resident notice as soon as practicable 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 eviction;

(D) an immediate transfer or discharge eviction is required by the resident's urgent medical needs; or

(E) a resident has not resided in the facility for thirty (30) days.

(25) The health facility petition for emergency hearing in section (24) must:

(A) include an allegation specifying:

(1) the violation, act, or omission performed, caused, or threatened by the resident, including the specific, immediate, and serious danger to the health or safety of individuals in the facility; or

(2) the specific, urgent medical needs of the resident which necessitates an immediate eviction; and

(B) be sworn by the individual at the health facility making the request.

(26) The department or its designee will review the petition submitted pursuant to subsection (24) to determine whether the petition meets the requirements of subsection (25). If the petition meets the requirements for an emergency hearing, the department or its designee shall set the hearing for within three (3) business days after the petition is filed. If the petition fails to meet the requirements for an emergency hearing, the hearing shall be set in accordance with the normal procedures for eviction hearings. The department or its designee shall issue an order as soon as practicable based on the emergency need.

(27) A resident has the right to request an emergency hearing if the health facility has violated IC 32-31-5-6. Any petition for emergency hearing shall:

(A) contain an allegation specifying:

(i) the violation, act, or omission caused or threatened by the health facility under IC 32-31-5-6; and

(ii) The nature of the specific immediate and serious:

(AA) injury;

(BB) loss; or

(CC) damage;

that the resident has suffered or will suffer if the violation, act, or omission is not enjoined; and

(B) be sworn to by the petitioner.

(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 **within their living unit. Each resident unit must be equipped with a lock for the resident's privacy with only limited, essential staff having access**. 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, except at the request of the resident. **Residents have the right to form collective house rules that include visitor guidelines. House rules may not conflict with the resident's resident agreement or rental agreement so long as the agreement complies with this rule and 42 CFR Parts 430-456.**

(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, **including the right to furnish and decorate their own living units,** 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 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; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3997; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA; errata filed Jul 28, 2021, 9:47 a.m.: 20210811-IR-410210316ACA)

SECTION 3. 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

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 **nursing** staff person, who may be a nurse aide as defined in 42 CFR § 483.5, 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 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 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:

(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, 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, staff who have contact with 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) The time, date, and location.

(B) The name of the instructor.

(C) The title of the instructor.

(D) The names of the participants.

(E) The 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~~ **upon hire**. The **health** screen shall **be consistent with current accepted standards of practice, to include, but not be limited to:**

(1) tuberculosis (TB) screening that includes a baseline individual TB risk assessment;

(2) a TB symptom evaluation;

(3) TB testing via either two-step (2-step) skin test (TST) or one-time (1-time) blood test (IGRA); and

(4) additional evaluation as indicated.

(g) Annual TB testing of employees is not recommended unless there is a known exposure or ongoing transmission at a healthcare facility. Facilities should follow current accepted standards of practice for screening and testing of employees.

(h) Employees with untreated latent TB infection should receive an annual TB symptom screen. Symptoms for TB disease include any of the following:

(1) a cough lasting longer than three weeks.

(2) unexplained weight loss.

(3) night sweats or a fever.

(4) loss of appetite.

(i) All employees should receive TB education annually. TB education should include, but is not limited to, information on TB risk factors, the signs and symptoms of TB disease, and TB infection control policies and procedures.

~~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~~**(j)** 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)~~ **(k)** The facility must prohibit employees with **evidence of active** 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, **cough, fever and unexplained weight loss,** shall be ~~handled~~ **addressed** according to **current accepted standards of practice and** 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~~ **communicable disease** will not be permitted to work until determined to be noninfectious **by a licensed medical provider** and documentation is provided for the employee record.

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

(1) The name and address of the employee.

(2) Social Security number.

(3) Date of beginning employment.

(4) Past employment, experience, and education, if applicable.

(5) Professional licensure or registration number or dining assistant certificate or letter of completion, 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 acknowledgement of orientation to residents' rights.
(9) Performance evaluations in accordance with facility policy.
(10) Date and reason for separation.

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

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

(1) subsection (b), (c), or ~~(g)~~ **(k)** is a deficiency;
(2) subsection (a), (d), (e), or (f) is a noncompliance; and
(3) subsection ~~(h)~~ **(l)** or ~~(i)~~ **(m)** is a nonconformance.

(Indiana 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; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4003; filed Aug 11, 2004, 11:00 a.m.: 28 IR 193; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 4. 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
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 **convene with the resident, resident representative, and requested persons of the resident's choice to** 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 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.

(g) nothing in this section shall be deemed a waiver of any requirements set forth in 42 CFR 441.725 for residents receiving services through a Home and Community Based Services waiver program.

(Indiana 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; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4005; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 5. 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

Affected: IC 16-28-5-1; IC 16-28-1-11.5

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

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

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

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

(e) 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 **except for residents:**

(A) whose service plan reflects the ability to self-administer medication; and

(B) who are capable of self-administering all aspects of their medication other than set up, including independent use of the pill box.

(5) The facility may prepare up to one (1) week of med set doses for those residents who qualify under clauses (4) (A) and(4) (B).

(5) Injectable medications shall be given only by licensed personnel **except as authorized by IC 16-28-1-11.5(b)**.

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

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

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

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

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

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

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

(4) subsection (c) is a nonconformance.

(Indiana Department of Health; 410 IAC 16.2-5-4; filed May 2, 1984, 2:50 p.m.: 7 IR 1497; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1576, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1929, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4006; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 6. 410 IAC 16.2-5-5.1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-5.1 Food and nutritional services

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1

Sec. 5.1. (a) The facility shall provide, arrange, or make available three (3) well-planned **substantial** meals a day, seven (7) days a week that **include three or more menu items at one time, one of which includes a high-quality protein and represents no less than 20% of the days total nutritional requirement,** provide a balanced distribution of the daily nutritional requirements **and ensure that residents have access to food at any time**. **A minimum of two (2) meals per day must include hot food options.**

(b) The menu or substitutions, or both, for all meals shall be approved by a registered dietician.

(c) The facility must meet:

(1) daily dietary requirements and requests, with consideration of food allergies;

(2) reasonable religious, ethnic, and personal preferences; and

(3) the temporary need for meals delivered to the resident's room.

(d) All modified diets shall be prescribed by the attending physician.

(e) All food shall be served at a safe and appropriate temperature.

(f) All food preparation and serving areas (excluding areas in residents' units) are maintained in accordance with state and local sanitation and safe food handling standards, including 410 IAC 7-24.

(g) There shall be an organized food service department directed by a supervisor competent in food service management and knowledgeable in sanitation standards, food handling, food preparation, and meal service.

(1) The supervisor must be one (1) of the following:

(A) A dietitian.

(B) A graduate or student enrolled in and within one (1) year from completing a division approved, minimum ninety (90) hour classroom instruction course that provides classroom instruction in food service supervision who has a minimum of one (1) year of experience in some aspect of institutional food service management.

(C) A graduate of a dietetic technician program approved by the American Dietetic Association.

(D) A graduate of an accredited college or university or within one (1) year of graduating from an accredited college or university with a degree in foods and nutrition or food administration with a minimum of one (1) year of experience in some aspect of food service management.

(E) An individual with training and experience in food service supervision and management.

(2) If the supervisor is not a dietitian, a dietitian shall provide consultant services on the premises at peak periods of operation on a regularly scheduled basis.

(3) Food service staff shall be on duty to ensure proper food preparation, serving, and sanitation.

(h) Diet orders shall be reviewed and revised by the physician as the resident's condition requires.

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

(1) subsection (a), (c), (d), (e), (f), or (h) is a deficiency; and

(2) subsection (b) or (g) is a noncompliance.

(Indiana Department of Health; 410 IAC 16.2-5-5.1; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1931, eff Mar 1, 2003; errata filed Jan 21, 2005, 10:32 a.m.: 28 IR 1695; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 7. 410 IAC 16.2-5-6 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-6 Pharmaceutical services

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1; IC 25-26-13

Sec. 6. (a) Residents who self-medicate may keep and use prescription and nonprescription medications in their unit as long as they keep them secured from other residents **and may not be subject to any administrative fee by the facility**.

(b) The facility shall maintain clear written policies and procedures on medication assistance. The facility shall provide for ongoing training to ensure competence of medication staff.

(c) If the facility controls, handles, and administers medications for a resident, the facility shall do the following for that resident:

(1) Make arrangements to ensure that pharmaceutical services are available to provide residents with prescribed medications in accordance with applicable laws of Indiana.

(2) A consultant pharmacist shall be employed, or under contract, and shall:

(A) be responsible for the duties as specified in 856 IAC 1-7 (expired);

(B) review the drug handling and storage practices in the facility;

(C) provide consultation on methods and procedures of ordering, storing, administering, and disposing of drugs as well as medication record keeping;

(D) report, in writing, to the administrator or the administrator's designee any irregularities in dispensing or administration of drugs; and

(E) review the drug regimen of each resident receiving these services at least once every sixty (60) days.

(3) The medication review, recommendations, and notification of the physician, if necessary, shall be documented in accordance with the facility's policy.

(4) Over-the-counter medications, prescription drugs, and biologicals used in the facility must be labeled in accordance with currently accepted professional principles and include the appropriate accessory and cautionary instructions and the expiration date.

(5) Labeling of prescription drugs shall include the following:

(A) Resident's full name.

(B) Physician's name.

(C) Prescription number.

(D) Name and strength of the drug.

(E) Directions for use.

(F) Date of issue and expiration date (when applicable).

(G) Name and address of the pharmacy that filled the prescription.

If medication is packaged in a unit dose, reasonable variations that comply with the acceptable pharmaceutical procedures are permitted.

(6) Over-the-counter medications must be identified with the following:

(A) Resident name.

(B) Physician name.

(C) Expiration date.

(D) Name of drug.

(E) Strength.

(d) If a facility operates its own duly licensed pharmacy, it shall comply with IC 25-26-13.

(e) Medicine or treatment cabinets or rooms shall be appropriately locked at all times except when authorized personnel are present. All Schedule II drugs administered by the facility shall be kept in individual containers under double lock and stored in a substantially constructed box, cabinet, or mobile drug storage unit.

(f) Residents may use the pharmacy of their choice for medications administered by the facility, as long as the pharmacy:

(1) complies with the facility policy receiving, packaging, and labeling of pharmaceutical products unless contrary to state and federal laws;

(2) provides prescribed service on a prompt and timely basis; and

(3) refills prescription drugs when needed, in order to prevent interruption of drug regimens.

(4) the facility may impose a reasonable administrative fee to accommodate a resident's choice of pharmacy. The fee must be reasonably attributed to actual administrative cost.

(g) Unused portions of medications not released with the resident or returned for credit shall be rendered nonretrievable within three (3) days by the consultant pharmacist or licensed nurse, and a witness.

(h) To be rendered nonretrievable, a medication must be rendered chemically unusable, to such an extent that the medication cannot be recovered or used in the chemically transformed form, and disposed of pursuant to federal, state, or local law, or it must be stored in a locked, authorized storage container within the facility.

(i) An authorized storage container must contain a locked, hard outer layer securely attached to a permanent structure of the building and a removable inner liner and shall include the following requirements:

(1) An inner liner shall meet the following requirements:

(A) The inner liner shall be waterproof, tamper evident, and tear-resistant.

(B) The inner liner shall be removable and sealable immediately upon removal without emptying or touching the contents.

(C) The contents of the inner liner shall not be viewable from the outside when sealed.

(D) The size of the inner liner shall be clearly marked on the outside of the liner (e.g., 5-gallon, 10-gallon).

(E) The inner liner shall bear a permanent, unique identification number that enables the inner liner to be tracked.

(2) Access to the inner liner shall be restricted to the consultant pharmacist or a licensed nurse of the facility.

(3) The inner liner shall be sealed by the consultant pharmacist or a licensed nurse, and a witness, immediately upon removal from the permanent outer container, and the sealed inner liner shall not be opened, x-rayed, analyzed, or otherwise penetrated.

(4) At the time of removal, the contents of the inner liner must be destroyed in the sealed inner liner, returned via a mail-back program, or returned to the original distributor's registered location by common or contract carrier pick-up.

(j) Disposition of any released, returned, or destroyed medication shall be written in the resident's clinical record and shall include the following information:

(1) The name of the resident.

(2) The name and strength of the drug.

(3) The prescription number.

(4) The reason for disposal.

(5) The amount disposed of.

(6) The method of disposition.

(7) The date of disposal.

(8) The signatures of the persons conducting the disposal of the drug.

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

(1) subsection (c)(2), (c)(4), (c)(5), (c)(6), (d), or (e) is a deficiency; and

(2) subsection (a), (b), (c)(1), (c)(3), (f), or (g) is a noncompliance.

(Indiana Department of Health; 410 IAC 16.2-5-6; filed May 2, 1984, 2:50 p.m.: 7 IR 1498; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1579, 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 1932, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA; filed Apr 19, 2021, 10:25 a.m.: 20210512-IR-410200603FRA)

SECTION 8. 410 IAC 16.2-5-7.1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-7.1 Activities programs

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1

Sec. 7.1. (a) The facility shall provide activities programs appropriate to the abilities and interests of the residents being served **and ensure an integrated setting that provides full access to the greater community, including opportunities to:**

(1) seek employment and work in competitive integrated settings;

(2) engage in community life;

(3) control personal resources; and

(4) receive services in the community.

(b) The facility shall provide ~~and/~~or **assist in** ~~coordinate~~ **coordinating** scheduled transportation to community-based activities, **employment, and services, ensuring that options available to the surrounding community are communicated to residents.**

(c) An activities director shall be designated and must be one (1) of the following:

(1) A recreation therapist.

(2) An occupational therapist or a certified occupational therapy assistant.

(3) An individual who has satisfactorily completed or will complete within one (1) year an activities director course approved by the division.

(d) After July 1, 1984, any person who has not completed an activities director course approved by the division shall receive consultation until the person has completed such a course. Consultation shall be provided by:

(1) a recreation therapist;

(2) an occupational therapist or occupational therapist assistant; or

(3) a person who has completed a division approved course and has two (2) years of experience.

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

(1) subsection (a) is a deficiency;

(2) subsection (c) or (d) is a noncompliance; and

(3) subsection (b) is a nonconformance.

(Indiana Department of Health; 410 IAC 16.2-5-7.1; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1933, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 9. 410 IAC 16.2-5-8.1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-8.1 Clinical records

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1

Sec. 8.1. (a) The facility must maintain clinical records on each resident. These records must be maintained under the supervision of an employee of the facility designated with that responsibility. The records must be as follows:

(1) Complete.

(2) Accurately documented.

(3) Readily accessible.

(4) Systematically organized.

(b) Clinical records must be retained after discharge:

(1) for a minimum period of one (1) year in the facility and five (5) years total; or

(2) for a minor, until twenty-one (21) years of age.

(c) The facility must safeguard clinical record information against loss, destruction, or unauthorized use.

(d) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, and release such records only as permitted by law.

(e) The clinical record must contain the following:

(1) Sufficient information to identify the resident.

(2) A record of the resident's evaluations.

(3) **The service plan including** services provided.

(4) Progress notes.

(f) The facility shall have a policy that ensures the staff has sufficient information to meet the residents' needs.

(g) A transfer form shall include the following:

(1) Identification data.

(2) Name of the transferring institution.

(3) Name of the receiving institution and date of transfer.

(4) Resident's personal property when transferred to an acute care facility.

(5) Nurses' notes relating to the resident's:

(A) functional abilities and physical limitations;

(B) nursing care;

(C) medications;

(D) treatment; and

(E) current diet and condition on transfer.

(6) Diagnosis.

(7) Date of ~~chest x-ray and~~ skin test for tuberculosis.

(h) Current clinical records shall be completed promptly, and those of discharged residents shall be completed within seventy (70) days of the discharge date.

(i) A current emergency information file shall be immediately accessible for each resident, in case of emergency, that contains the following:

(1) The resident's name, sex, room or apartment number, phone number, age, or date of birth.

(2) The resident's hospital preference.

(3) The name and phone number of any legally authorized representative.

(4) The name and phone number of the resident's physician of record.

(5) The name and telephone number of the family members or other persons to be contacted in the event of an emergency or death.

(6) Information on any known allergies.

(7) A photograph (for identification of the resident).

(8) Copy of advance directives, if available.

(j) If a death occurs, information concerning the resident's death shall include the following:

(1) Notification of the physician, family, responsible person, and legal representative.

(2) The disposition of the body, personal possessions, and medications.

(3) A complete and accurate notation of the resident's condition and most recent vital signs and symptoms preceding death.

(k) The facility shall store inactive clinical records in accordance with applicable state and federal laws in a safe and accessible manner. The storage facilities shall provide protection from vermin and unauthorized use.

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

(1) subsection (a), (c), (d), (e), (f), (g), (i), or (j) is a noncompliance; and

(2) subsection (b), (h), or (k) is a nonconformance.

(Indiana Department of Health; 410 IAC 16.2-5-8.1; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1934, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 10. 410 IAC 16.2-5-12 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-12 Infection control

Authority: IC 16-28-1-7

Affected: IC 4-21.5; IC 16-28-5-1

Sec. 12. (a) The facility must establish and maintain an infection control practice designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of diseases and infection.

(b) The facility must establish an infection control program that includes the following:

(1) A system that enables the facility to analyze patterns of known infectious symptoms.

(2) Provides orientation and in-service education on infection prevention and control, including universal precautions.

(3) Offering health information to residents, including, but not limited to, infection transmission and immunizations.

(4) Reporting communicable disease to public health authorities.

~~(c) Each resident shall have a diagnostic chest x-ray completed no more than six (6) months prior to admission.~~

~~(d)~~ **(c)** Prior to admission, each resident shall be required to have a health assessment, including history of significant past or present infectious diseases ~~and a statement that the resident shows no evidence of tuberculosis in an infectious stage as verified upon admission and yearly thereafter~~ **and screening for current signs and symptoms of TB**. **A TB test must be completed within three (3) months prior to admission or upon admission unless there is documentation of a previous positive TB test. TB testing must be completed using current accepted standards of practice, for either two-step (2-step) skin test or one-time (1-time) blood test. Routine or baseline chest X-rays are not required or recommended prior to or at the time of admission.**

~~(e) In addition, a tuberculin skin test shall be completed within three (3) months prior to admission or upon admission and read at forty-eight (48) to seventy-two (72) hours. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered and read.~~

~~(f) For residents 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 within one (1) to three (3) weeks after the first test. The frequency of repeat testing will depend on the risk of infection with tuberculosis.~~

~~(g)~~ **(d)** All residents who have a positive reaction to the tuberculin skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis. **Any asymptomatic resident with a new positive TST or IGRA must have a medical evaluation and chest X-ray within one week. Once TB disease is ruled out, the resident should be considered and evaluated for treatment. Residents with latent TB infection (LTBI) should be screened for HIV infection. The facility shall confirm that LTBI has been reported to the state agency by the diagnosing physician/hospital. Residents with symptoms of pulmonary TB and an abnormal chest X-ray consistent with TB disease should have an evaluation done as soon as possible and be placed in airborne transmission-based precautions. Periodic chest X-rays of residents with a history of positive TST or IGRA are not advised and are not necessary unless the individual develops signs and symptoms of TB disease.**

~~(h)~~ **(e)** All skin testing for tuberculosis shall be done using the Mantoux method (5TU, PPD) administered by persons having documentation of training from a department-approved course of instruction in intradermal tuberculin skin testing, reading, and recording.

~~(i)~~ **(f)** Persons with a documented history of a positive tuberculin skin test, adequate treatment for disease, or preventive therapy for infection shall be exempt from further skin testing. **If the prior positive test was followed by a clinical evaluation for TB that included a chest radiograph (X-ray), results of that evaluation shall be acquired by the facility and included in the patient's record. If documentation of a clinical evaluation cannot be obtained, a clinical evaluation with a chest radiograph shall be performed. In the absence of symptoms, the evaluation can be delayed up to one week following admission.** In lieu of a tuberculin skin test, these persons should have an annual risk assessment for the development of symptoms suggestive of tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss. If symptoms are present, the individual shall be evaluated immediately with a chest x-ray.

~~(j)~~ (**i**) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident only to the degree needed to isolate the infecting organism.

~~(k)~~ (**j**) The facility must require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice.

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

(1) subsection (a) is an offense;

(2) subsection **(i) or** (j) ~~or (k)~~ is a deficiency; and

(3) subsection (b), (c), (d), (e), (f), (g), **or** (h)~~, or (i)~~ is a noncompliance.

(Indiana Department of Health; 410 IAC 16.2-5-12; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1935, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 11. 410 IAC 16.2-5-13 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-13 Dining assistants

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1; IC 16-28-13-3; IC 25-23-1-1

Sec. 13. (a) Each dining assistant shall successfully complete a sixteen (16) hour training program for dining assistants that has been approved by the department.

(b) A dining assistant training program must obtain approval from the department prior to providing instruction to individuals.

(c) The facility shall do the following:

(1) Ensure that resident selection for dining assistance is based on the charge nurse's assessment and the resident's most recent assessment and **service** plan ~~of care~~.

(2) Not allow the dining assistant to assist more than two (2) residents at any one (1) time.

(3) Ensure the dining assistant is oriented to the following:

(A) The resident's diet, likes, and dislikes.

(B) Feeding techniques appropriate to the individual resident.

(4) Document the use of a dining assistant on the resident's ~~care~~ **service** plan and review at each ~~care~~ **service** plan conference.

(5) Check the nurse aide registry prior to training an individual as a dining assistant.

(6) Use only individuals as dining assistants who have successfully completed a department-approved training program for dining assistants.

(d) The scope of practice for dining assistants is as follows:

(1) A dining assistant shall work under the supervision of a licensed nurse who is on the unit or floor where the dining assistance is furnished and is immediately available to provide assistance as needed.

(2) In an emergency, a dining assistant shall call the supervising nurse using the resident call system or any other method available.

(3) A dining assistant shall assist only residents who do not have complicated eating problems, which include, but are not limited to, the following:

(A) Difficulty swallowing.

(B) Recurrent lung aspirations.

(C) Tube or parenteral/IV feedings.

(e) The dining assistant training program shall consist of, but is not limited to, the following:

(1) Eight (8) hours of classroom instruction prior to any direct contact with a resident that includes the following:

(A) Feeding techniques.

(B) Regular and special diets.

(C) Reporting food and fluid intake.

(D) Assistance with feeding and hydration.

(E) Communication and interpersonal skills.

(F) Infection control.

(G) Safety/emergency procedures including the Heimlich maneuver.

(H) Promoting residents' independence.

(I) Abuse, neglect, and misappropriation of property.

(J) Nutrition and hydration.

(K) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting these changes to the supervising nurse.

(L) Mental health and social service needs including how to respond to a resident's behavior.

(M) Residents' rights including the following:

(i) Privacy.

(ii) Confidentiality.

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

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

(v) Dignity.

(2) Eight (8) hours of clinical instruction that consists of, but is not limited to, the following:

(A) Feeding techniques.

(B) Assistance with eating and hydration.

(f) The dining assistant training program and training facility, if applicable, must ensure that clinical instruction provides for the direct supervision of the dining assistant by a licensed nurse.

(g) Each training program shall have a qualified instructor responsible for program oversight who at a minimum:

(1) possesses a valid Indiana registered nurse license under IC 25-23-1-1;

(2) possesses two (2) years of licensed nursing experience, of which at least one (1) year of experience is in the provision of long term care services; and

(3) completed a department-approved training program.

(h) An approved program director of a department nurse aide training program constitutes a qualified instructor under subsection (g) and may conduct dining assistant training without additional training.

(i) Dining assistant training may only be provided by:

(1) a registered nurse;

(2) a licensed practical nurse;

(3) a qualified dietician;

(4) an occupational therapist; or

(5) a speech-language pathologist.

Certified nurse aide and qualified medication aide personnel shall not participate in or provide any dining assistant training.

(j) In order to issue a certificate or letter of completion to the dining assistant, the dining assistant training program shall ensure that the dining assistant demonstrates competency in all areas of instruction using a checklist approved by the department.

(k) Each approved program shall maintain a student file that:

(1) is retained for a minimum of three (3) years; and

(2) contains:

(A) individualized documentation of the:

(i) classroom training that includes dates of attendance and areas of instruction; and

(ii) clinical instruction that includes dates of attendance and areas of instruction including procedures and activities completed during the clinical experience; and

(B) a copy of the certificate or letter confirming successful completion of the dining assistant training program, which shall be signed and dated by the instructor and bear the name and address of the training program.

(l) The department may revoke an approved dining assistant training program if evidence exists that the program has not been administered in accordance with this section.

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

(1) subsection (a), (b), (c), (d), (e), (f), (g), or (j) is a deficiency;

(2) subsection (h) or (i) is a noncompliance; and

(3) subsection (k) is a nonconformance.

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