

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Assisted Living and Shared Housing Establishment Code
- 2) Code Citation: 77 Ill. Adm. Code 295
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
295.300	Amendment
295.500	Amendment
- 4) Statutory Authority: Assisted Living and Shared Housing Act [210 ILCS 9]
- 5) A Complete Description of the Subjects and Issues Involved:

As of November 27, 2006, there are 189 facilities licensed under the Assisted Living and Shared Housing Act (the Act) [210 ILCS 9]. An additional 34 facilities have pending applications to be licensed. Nationally, assisted living facilities outnumber nursing homes by a 2 to 1 margin. Most states enacted an assisted living licensure statute many years before the Illinois Act was implemented. As such, it is expected that the number of Illinois facilities will continue to grow at a rapid rate until they are closer in number to the national averages. The Department is charged with the duty of regulating this burgeoning growth of facilities and seeks to do so through additional checks and balances of on-site surveys.

Current staffing in the Division of Assisted Living includes three people, with only one of these three being a field surveyor.

Based on our knowledge of the license requirements and discussions with survey staff in other states, a minimum of 5 worker days per facility is required to conduct annual surveys, re-inspections and complaint investigations. Based on these minimum workload estimates, the required field survey staff for the regulation of the 189 Illinois facilities would be 945 worker days. At 200 worker days per full time equivalent, there should be approximately 5 field survey staff in the Division of Assisted Living.

The proposed increase of annual license fees to \$1,000 plus \$10 per unit for assisted living, and \$500 for shared housing will allow the Department the tools required to protect resident safety, protect the elderly and disabled, and protect consumers from unlicensed, unsafe facilities.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

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The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create a State Mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register* to:

Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 West Jefferson St., 5th Floor
Springfield, Illinois 62761
217/782-2043
e-mail: rules@idph.state.il.us

- 13) Initial Regulatory Flexibility Analysis:
 - A) Type of small businesses, small municipalities and not-for-profit corporations affected: assisted living and shared housing facilities
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None

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- 14) Regulatory Agenda on which this rulemaking was summarized:

This rule was in the January 2007 Regulatory Agendas.

The full text of the Proposed Amendment begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 295
ASSISTED LIVING AND SHARED HOUSING ESTABLISHMENT CODE

SUBPART A: GENERAL PROVISIONS

Section	
295.100	Purpose of the Act and this Part
295.200	Definitions
295.300	Incorporated and Referenced Materials
295.400	License Requirement
295.500	Application for License
295.600	Issuance of an Initial Regular License
295.700	Issuance of a Renewal License
295.800	Probationary License
295.900	Denial of a License
295.1000	Revocation, Suspension, or Refusal to Renew a License
295.1010	Transfer of Ownership
295.1020	Information to Be Made Available to the Resident by the Licensee
295.1030	Information to Be Made Available to the Public by the Department
295.1040	Technical Infractions
295.1050	Violations
295.1060	Remedies and Sanctions
295.1070	Annual On-Site Review and Complaint Investigation Procedures
295.1080	Waivers
295.1090	Complaints
295.1100	Alzheimer's Special Care Disclosure

SUBPART B: POLICIES

Section	
295.2000	Residency Requirements
295.2010	Termination of Residency
295.2020	Notice of Closure
295.2030	Establishment Contracts
295.2040	Disaster Preparedness
295.2050	Incident and Accident Reporting

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295.2060 Quality Improvement Program
295.2070 Negotiated Risk Agreement

SUBPART C: PERSONNEL

Section
295.3000 Personnel Requirements, Qualifications and Training
295.3010 Manager's Qualifications
295.3020 Employee Orientation and Ongoing Training
295.3030 Initial Health Evaluation for Direct Care and Food Service Employees
295.3040 Health Care Worker Background Check

SUBPART D: RESIDENT CARE AND SERVICES

Section
295.4000 Physician's Assessment
295.4010 Service Plan
295.4020 Mandatory Services
295.4030 Special Safety and Service Needs of Individuals Who Are Quadriplegic or Paraplegic, or Who Have Neuro-Muscular Diseases
295.4040 Communicable Disease Policies
295.4050 Tuberculin Skin Test Procedures
295.4060 Alzheimer's and Dementia Programs

SUBPART E: MEDICATIONS

Section
295.5000 Medication Reminders, Supervision of Self-Medication, Medication Administration and Storage

SUBPART F: RESIDENT RIGHTS

Section
295.6000 Resident Rights
295.6010 Abuse, Neglect, and Financial Exploitation Prevention and Reporting
295.6030 Resident's Representative

SUBPART G: RESIDENT AND ESTABLISHMENT RECORDS

Section

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295.7000 Resident Records
295.7010 Establishment Records

SUBPART H: FOOD SERVICE

Section
295.8000 Food Service

SUBPART I: PHYSICAL PLANT AND ENVIRONMENTAL REQUIREMENTS

Section
295.9000 Physical Plant
295.9005 Units
295.9010 Supplemental Physical Plant Requirements for Assisted Living Establishments
295.9020 Supplemental Physical Plant Requirements for Shared Housing Establishments
295.9030 Furnishings
295.9040 Environmental Requirements

295.APPENDIX A Physician's Assessment Form
295.TABLE A Heat Index Table/Apparent Temperature

AUTHORITY: Implementing and authorized by the Assisted Living and Shared Housing Act [210 ILCS 9].

SOURCE: Adopted at 25 Ill. Reg. 14401, effective December 1, 2001; emergency amendment at 27 Ill. Reg. 6378, effective April 1, 2003, for a maximum of 150 days; emergency expired August 28, 2003; amended at 27 Ill. Reg. 18087, effective November 12, 2003; amended at 28 Ill. Reg. 14593, effective October 21, 2004; amended at 32 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 295.300 Incorporated and Referenced Materials

- a) The following private and professional association standards are incorporated in this Part.
 - 1) National Fire Protection Association (NFPA) Standard No. 101: Life Safety Code, Chapter 32, New Residential Board and Care Occupancies

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(2000), which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts ~~02169~~02269.

- 2) American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorder, Fourth Edition (DSM-IV) (1994), which may be obtained from the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005.
- b) The following federal guidelines are incorporated in this Part:
- ADA Accessibility Guidelines (ADAAG), January 1998, which may be obtained from the U.S. Access Board, 133 F Street NW, Suite 1000, Washington, D.C. 20004-1111.
- c) All incorporations by reference of federal guidelines and the standards of nationally recognized organizations refer to the standards on the date specified and do not include any additions or deletions subsequent to the date specified.
- d) The following statutes and State rules are referenced in this Part:
- 1) Federal statutes:

Americans with Disabilities Act (42 USC 12101 et seq.)
 - 2) State of Illinois statutes:
 - A) Medical Practice Act of 1987 [225 ILCS 60]
 - B) Nursing and Advanced Practice Nursing Act [225 ILCS 65]
 - C) Child Care Act of 1969 [225 ILCS 10]
 - D) Hospital Licensing Act [210 ILCS 85]
 - E) Nursing Home Care Act [210 ILCS 45]
 - F) Probate Act of 1975 [755 ILCS 5]
 - G) Illinois Public Aid Code [305 ILCS 5]

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- H) Illinois Administrative Procedure Act [5 ILCS 100]
- I) Health Care Worker Background Check Act [225 ILCS 46]
- J) Criminal Code of 1961 [720 ILCS 5]
- K) Cannabis Control Act [720 ILCS 550]
- L) Powers of Attorney for Health Care Law [755 ILCS 45/Art. IV]
- M) Health Care Surrogate Act [755 ILCS 40]
- N) Illinois Controlled Substances Act [720 ILCS 570]
- O) Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135]
- P) Hospice Program Licensing Act [210 ILCS 60]
- Q) Freedom of Information Act [5 ILCS 140]
- R) Alzheimers' Special Care Disclosure Act [210 ILCS 4]
- S) Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55]
- T) Code of Civil Procedure [735 ILCS 5]
- U) Dietetic and Nutrition Services Practice Act [225 ILCS 30]
- V) Community Living Facilities Licensing Act [210 ILCS 35]
- W) Supportive Residences Licensing Act [210 ILCS 65]
- X) Life Care Facilities Act [210 ILCS 40]
- Y) Uniform Conviction Information Act [20 ILCS 2635]
- Z) Criminal Jurisprudence Act [720 ILCS 115]

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AA) Wrongs to Children Act [720 ILCS 150]

3) State of Illinois rules:

A) Capital Development Board, Illinois Accessibility Code (71 Ill. Adm. Code 400)

B) Department of Public Health

i) Control of Communicable Diseases Code (77 Ill. Adm. Code 690)

ii) Food Service Sanitation Code (77 Ill. Adm. Code 750)

iii) Private Sewage Disposal Code (77 Ill. Adm. Code 905)

iv) Drinking Water Systems Code (77 Ill. Adm. Code 900)

v) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)

vi) Public Area Sanitary Practice Code (77 Ill. Adm. Code 895)

vii) Control of Tuberculosis Code (77 Ill. Adm. Code 696)

(Amended at 32 Ill. Reg. _____, effective _____)

Section 295.500 Application for License

a) *An applicant shall provide the following information, on forms provided by the Department, to be considered for licensure:*

1) *The business name, street address, mailing address, and telephone number of the establishment;*

2) *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 owners, and the names and addresses of the officers and members of the governing body, or*

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comparable persons for partnerships, limited liability companies, or other types of business organizations;

- 3) *Financial information establishing that the project is financially feasible, in one of the following forms:*
 - A) A surety bond in an amount equal to at least three months operating expenses;
 - B) An independent certified public accountant's report expressing an opinion on the financial status of the establishment;
 - C) An audited financial report certifying the financial status of the applicant;
 - D) The entity's most recent bond rating (less than 2 years old) from Fitch's, Moody's, or Standard and Poor's rating agency that documents an "A" rating or better;
 - E) Evidence of operation for at least 2 years of a facility licensed under the Nursing Home Care Act or under the Assisted Living and Shared Housing Act; or
 - F) If the applicant is not able to provide any of the information listed in subsections (a)(3)(A)-(E), the applicant may provide any other information acceptable to the Department that demonstrates financial status.
- 4) *The name and mailing address of the managing agent of the establishment, whether hired under a management agreement or lease agreement, if different from the owner or owners, and the name of the full-time manager;*
- 5) *Verification that the establishment has entered or will enter into a service delivery contract as provided in Section 295.2030, as required under the Act, with each resident or resident's representative;*
- 6) *The name and address of at least one natural person who shall be responsible for dealing with the Department on all matters provided for in this Part, on whom personal service of all notices and orders shall be*

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made, and who shall be authorized to accept service on behalf of the owner or owners and the managing agent. Notwithstanding a contrary provision of the Code of Civil Procedure, personal service on the person identified pursuant to this subsection (a)(6) shall be considered service on the owner or owners and the managing agent, and it shall not be a defense to any action that personal service was not made on each individual or entity;

- 7) *The signature of the authorized representative of the owner or owners;*
- 8) *Proof of an ongoing quality improvement program in accordance with Section 295.2060 of this Part;*
- 9) *Information about the number and types of units and the maximum census;*
- 10) If all units are not licensed, the establishment shall maintain documentation of which units are providing assisted living services. This number shall not exceed the number of units on the license. The entire building having any licensed units shall meet the physical plant requirements of this Part;
- 11) *Information about the mandatory and optional services to be provided at the establishment;*
- 12) *Proof of compliance with applicable State and local residential standards, as evidenced by completion of the Department's Certificate of Compliance form;*
- 13) *A copy of the standard contract offered to residents;*
- 14) *Documentation of adequate liability insurance; (Section 30 of the Act)*
- 15) If the establishment does not have a permit under the Life Care Facilities Act and the establishment requires entrance or application fees in excess of three months of a resident's minimum fees, the establishment must maintain a bond or restricted account that guarantees the return of the resident's entrance fees and/or the unused portion of his or her deposit if the establishment ceases to operate;
- 16) A completed Alzheimer's Special Care Disclosure form; and

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- 17) A schematic drawing of the establishment.
- b) To support regulatory activities necessary to implement the Act, applications shall be accompanied by a nonrefundable fee of:
- 1) ~~\$1,000~~\$300 for an assisted living establishment and ~~\$10~~\$5 per licensed unit; or
 - 2) ~~\$500~~\$150 for a shared housing establishment.
- c) If any of the information in the application changes during the application process, the applicant shall notify the Department, in writing, of those changes. Such written notification will become a part of the licensee's file.

(Source: Amended at 32 Ill. Reg. _____, effective _____)