

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> :
295.100	Repeal
295.200	Amend
295.300	Amend
295.500	Amend
295.600	Amend
295.700	Amend
295.1100	Amend
295.1110	New
295.3040	Amend
295.7010	Amend
- 4) Statutory Authority: Assisted Living and Shared Housing Act [210 ILCS 9]
- 5) A Complete Description of the Subjects and Issues Involved: The Assisted Living and Shared Housing Establishment Code is being amended to implement PA 93-141. This legislation amended the Assisted Living and Shared Housing Act to add a provision for floating licenses and to clarify requirements concerning care for residents with Alzheimer's disease and dementia, hospice care, and unlicensed establishments. The Alzheimer's and dementia, hospice care, and unlicensed establishments amendments were adopted on October 21, 2004 (28 Ill. Reg. 14593).

For floating licenses, in this rulemaking, Section 295.200 (Definitions), Section 295.500 (Application for License), and Section 295.7010 (Establishment Records) are being amended and Section 295.1110 (Floating Licenses) is being added. The Department also is amending Section 295.300 (Incorporated and Referenced Material), Section 295.600 (Issuance of Initial Regular License), Section 295.700 (Issuance of a Renewal License), and Section 295.1100 (Alzheimer's Special Care Disclosure).

Section 245.3040 is being amended to replace the existing text with a requirement that facilities comply with the Health Care Worker Background Check Act [225 ILCS 46] and the Health Care Worker Background Check Code (77 Ill. Adm. Code 955). Additionally, references to the Assisted Living and Shared Housing Standards and Quality of Life Advisory Board have been stricken because PA 96-975 eliminated the Advisory Board.

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

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 any 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 Objective: 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: dph.rules@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Type of small businesses, small municipalities and not-for-profit corporations affected: Assisted Living and Shared Housing Establishments

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- B) Reporting, bookkeeping or other procedures required for compliance:
Establishments will have to maintain records of floating licenses.
 - C) Types of professional skills necessary for compliance: Assisted Living Managers
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2010

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

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIESPART 295
ASSISTED LIVING AND SHARED HOUSING ESTABLISHMENT CODE

SUBPART A: GENERAL PROVISIONS

Section

295.100	Purpose of the Act and this Part <u>(Repealed)</u>
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 <u>Disease and Related Dementias</u> Special Care Disclosure
<u>295.1110</u>	<u>Floating Licenses</u>

SUBPART B: POLICIES

Section

295.2000	Residency Requirements
295.2010	Termination of Residency
295.2020	Notice of Closure
295.2030	Establishment Contracts

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- 295.2040 Disaster Preparedness
- 295.2050 Incident and Accident Reporting
- 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

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SUBPART G: RESIDENT AND ESTABLISHMENT RECORDS

Section

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. 7968, effective May 12, 2008; amended at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 295.100 Purpose of the Act and this Part (Repealed)

- a) *The purpose of the Act is to permit the development and availability of assisted living establishments and shared housing establishments based on a social model*

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~~that promotes the dignity, individuality, privacy, independence, autonomy, and decision-making ability and the right to negotiated risk of those persons; to provide for the health, safety, and welfare of those residents residing in assisted living and shared housing establishments in this State; to promote continuous quality improvement in assisted living; and to encourage the development of innovative and affordable assisted living establishments and shared housing with service establishments for elderly persons of all income levels. It is the public policy of this State that assisted living is an important part of the continuum of long-term care. In support of the goal of aging in place within the parameters established by the Act, assisted living and shared housing establishments shall be operated as residential environments with supportive services designed to meet the individual resident's changing needs and preferences. The residential environment shall be designed to encourage family and community involvement. The services available to residents, either directly or through contracts or agreements, are intended to help residents remain as independent as possible. Assisted living, which promotes resident choice, autonomy, and decision-making, should be based on a contract model designed to result in a negotiated agreement between the resident or the resident's representative and the provider, clearly identifying the services to be provided. This model assumes that residents are able to direct services provided for them and will designate a representative to direct these services if they themselves are unable to do so. This model supports the principle that there is an acceptable balance between consumer protection and resident willingness to accept risk and that most consumers are competent to make their own judgments about the services they are obtaining. Regulation of assisted living establishments and shared housing establishments must be sufficiently flexible to allow residents to age in place within the parameters of the Act. The administration of the Act and services provided must therefore ensure that the residents have the rights and responsibilities to direct the scope of services they receive and to make individual choices based on their needs and preferences. These establishments shall be operated in a manner that provides the least restrictive and most homelike environment and that promotes independence, autonomy, individuality, privacy, dignity, and the right to negotiated risk in residential surroundings. It is not the intent of the State that establishments licensed under this Act be used as halfway houses for alcohol and substance abusers. (Section 5 of the Act)~~

- b) ~~The purpose of this Part is to establish standards for assisted living and shared housing establishments. The standards support the concept of aging in place and promote the availability of appropriate services for elderly and disabled persons in~~

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~~a homelike environment that enhances the dignity, independence, individuality, privacy, choice and decision-making ability of the resident.~~

- e) ~~This Part requires assisted living and shared housing establishments to address standards in the delivery of services to residents and to design the physical environment to support dignity, independence, individuality, privacy, choice, and the decision-making abilities of individual residents.~~

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

Section 295.200 Definitions

~~The following terms have the meaning ascribed to them here whenever the term is used in this Part:~~

Abuse – any physical or mental injury or sexual assault inflicted on a resident, other than by accidental means, in an establishment.

Act – the Assisted Living and Shared Housing Act ~~(Public Act 91-656, effective January 1, 2001).~~

Activities of daily living – eating, dressing, bathing, toileting, transferring, or personal hygiene. (Section 10 of the Act)

Adequate – enough in either quantity or quality, as determined by a reasonable person. This determination ~~shall~~must be consistent with current professional standards of the subject under review, to meet the needs of the residents of a facility under the particular set of circumstances in existence at the time of review.

Administrative ~~warning~~Warning – a notice to an establishment issued by the Department under Section 295.1060 of this Part that indicates that a situation, condition or practice in the establishment violates the Act or this Part at the level of a Type 3 violation.

Applicant – the individual, partnership, corporation, association, or other person that owns or operates an assisted living or shared housing establishment and ~~applies~~makes application for a license.

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Appropriate – ~~indicate term used to indicate~~ that a requirement is to be applied according to the needs of a particular individual or situation, as determined by a reasonable person. This determination ~~shall~~~~must~~ be consistent with current professional standards of the subject under review.

Assessment – see Physician's ~~assessment~~~~Assessment~~.

Assisted living establishment or establishment – a home, building, residence, or any other place where sleeping accommodations are provided for at least three unrelated adults, at least 80% of whom are 55 years of age or older and where the following are provided consistent with the ~~purposes~~~~purpose~~ of the Act:

services consistent with a social model that is based on the premise that the resident's unit in assisted living and shared housing is his or her own home; community-based residential care for persons who need assistance with activities of daily living, including personal, supportive, and intermittent health-related services available 24 hours per day, if needed, to meet the scheduled and unscheduled needs of a resident;

mandatory services, whether provided directly by the establishment or by another entity arranged for by the establishment, with the consent of the resident or resident's representative; and

a physical environment that is a homelike setting that includes the following and such other elements as established by the Department ~~in~~ ~~conjunction with the Assisted Living and Shared Housing Advisory Board~~: individual living units each of which shall accommodate small kitchen appliances and contain private bathing, washing, and toilet facilities, or private washing and toilet facilities with a common bathing room readily accessible to each resident. Units shall be maintained for single occupancy except in cases in which ~~two~~ residents choose to share a unit. Sufficient common space shall exist to permit individual and group activities.

Assisted living establishment or establishment does not mean any of the following:

A home, institution, or similar place operated by the federal government or the State of Illinois.

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A long term care ~~facility~~establishment licensed under the Nursing Home Care Act ~~or facility licensed under the MR/DD Community Act~~. However, a ~~facility licensed under either of those Acts~~long term care establishment may convert distinct parts of the ~~facility~~establishment to assisted living. If the ~~facility~~long term care establishment elects to do so, the ~~facility~~establishment shall retain the Certificate of Need for its nursing and sheltered care beds that were converted.

A hospital, sanitarium, or other institution, the principal activity or business of which is the diagnosis, care, and treatment of human illness and that is required to be licensed under the Hospital Licensing Act.

~~A facility~~An establishment for child care as defined in the Child Care Act of 1969.

A community living ~~facility~~establishment as defined in the Community Living Facilities Licensing Act.

A nursing home or sanitarium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer in accordance with the creed or ~~tenets~~tenants of a well-recognized church or religious denomination.

~~A facility~~An establishment licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act.

A supportive residence licensed under the Supportive Residences Licensing Act.

~~The portion of a~~ life care ~~facility~~establishment as defined in the Life Care Facilities Act ~~not licensed as an assisted living establishment under the Act~~; a life care ~~facility~~establishment may apply under the Act to convert sections of the community to assisted living.

A free-standing hospice ~~facility~~establishment licensed under the Hospice Program Licensing Act.

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A shared housing establishment.

A supportive living ~~facility establishment~~ as described in Section 5-5.01a of the Illinois Public Aid Code. (Section 10 of the Act)

Chemical restraint – any drug that is used for discipline or convenience and is not required to treat medical symptoms.

Comprehensive assessment – see Physician's assessment.

Contract – a legal document containing all information required by Section 90 of the Act between the resident or his/her representative and the establishment, outlining the rights and responsibilities of both parties.

Department – the Department of Public Health. (Section 10 of the Act)

Developmental disability – a severe, chronic disability of a person that:

is attributable to a mental or physical impairment or combination of mental and physical impairments;

is manifested before the person attains age 22;

is likely to continue indefinitely;

results in substantial limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and are individually planned and coordinated.

Dietitian~~Dietician~~ – a person who is a licensed dietitian~~dietician~~ as provided in the Dietetic and Nutrition Services Practice Act.

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Direct care – the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.

Direct care staff – any person who provides assistance with nursing care or assistance with feeding, dressing, movement, bathing or other personal needs to a resident.

Direct supervision – oversight of the establishment by the manager.

Emergency situation – imminent danger of death or serious physical harm to a resident of an establishment. (Section 10 of the Act)

Evaluation or establishment evaluation – a determination by the establishment of a resident's abilities and needs, which takes into account the physician's assessment pursuant to Section 295.4000.

Financial exploitation – the act of obtaining control over the resident or his/her property through deception or intimidation with the intent of depriving the resident of the use, benefit or possession of his/her property.

Financial viability – having sufficient assets to provide mandatory services and utilities for at least a three-month period of time.

Floating License – an assisted living or shared housing establishment license issued by the Department in accordance with Section 295.600 or 295.700 that authorizes the establishment to transfer licensure from one individual living unit to another, in accordance with Section 32 of the Act and Section 295.1110. A floating license applies to any number of individual living units within the establishment up to, but not including, total capacity. (Section 32 of the Act)

Full time – on duty a minimum of 36 hours, four days per week.

Governing body – the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of an establishment and establishes policies concerning its operation and the welfare of the individuals it serves.

Guardian – a person appointed under the Probate Act of 1975 as a guardian of the person or guardian of the estate, or both, of a resident.

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Home health agency – a public agency or private organization that is licensed to provide home health services under the Home Health, Home Services, and Home Nursing Agency Licensing Act.

Intermittent~~Intermittent~~ health-related services – health-related services provided episodically, irregularly, or for a limited time period.

License – any of the following types of licenses issued to an applicant or licensee by the Department:

Probationary license – a license issued to an applicant or licensee that has not held a license under the~~the~~ Act prior to its application or pursuant to a license transfer in accordance with Section 50 of the~~the~~ Act.

Regular license – a license issued by the Department to an applicant or licensee that is in substantial compliance with the~~the~~ Act and this Part. (Section 10 of the Act)

Licensed health care professional – a registered professional nurse, an advanced practice nurse, a physician assistant, and a licensed practical nurse who holds a valid Illinois license under the applicable licensure statute. (Section 10 of the Act)

Licensee – a person, agency, association, corporation, partnership, or organization that has been issued a license to operate an assisted living or shared housing establishment. (Section 10 of the Act)

Manager – the individual in charge of overseeing and responsible for the day-to-day operation of the establishment.

Mandatory services – include the following:

3 meals per day available to the residents prepared by the establishment or an outside contractor;

housekeeping services including, but not limited to, vacuuming, dusting, and cleaning the resident's unit;

personal laundry and linen services available to the residents provided or

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arranged for by the establishment;

security provided 24 hours each day including, but not limited to, locked entrances or building or contract security personnel;

an emergency communication response system, which is a procedure in place 24 hours each day by which a resident can notify building management, an emergency response vendor, or others able to respond to his or her need for assistance; and

assistance with activities of daily living as required by each resident.
(Section 10 of the Act)

Medication administration – refers to a licensed health care professional employed by the establishment engaging in administering routine insulin and vitamin B-12 injections, oral medications, topical treatments, eye and ear drops, or nitroglycerine patches. (Section 70 of the Act)

Medication reminders – reminding residents to take pre-dispensed, self administered medication, observing the resident, and documenting whether or not the resident took the medication. (Section 70 of the Act)

Neglect – a failure by the establishment to provide services, as outlined in the service delivery contract; a failure to notify the appropriate health care professional that an assessment is necessary in accordance with the service plan; a failure to modify a service plan, as appropriate, based on a new physician's assessment; or a failure to terminate the residency of an individual whose needs can no longer be met by the establishment, which failure results in an avoidable decline in function.

Negotiated risk – the process by which a resident, or his or her representative, may formally negotiate with providers what risks each are willing and unwilling to assume in service provision and the resident's living environment. The provider assures that the resident and the resident's representative, if any, are informed of the risks of these decisions and of the potential consequences of assuming these risks. (Section 10 of the Act)

Negotiated risk agreement – a binding agreement, in compliance with Section 295.2070 of this Part, describing conditions or situations that could put the

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resident at risk of harm or injury, and describing the resident's agreement with the establishment for how those conditions or situations are to be handled.

Nonmedical services – optional services such as, but not limited to, transportation; social, recreational, educational, and religious services; and shopping.

Nurse – a registered nurse or a licensed practical nurse as defined in the ~~Nurse Nursing and Advanced Practice Nursing Act [225 ILCS 65]~~.

Operator – the person responsible for the control, maintenance and governance of the establishment, its personnel and physical plant.

Optional services – may include but are not limited to *medication reminders, supervision of self-administered medication, medication administration and nonmedical services*. (Section 70 of the Act)

Other resident injury – occurs when a resident is alleged to have suffered physical or mental harm and the allegation does not fall within the definition of abuse or neglect.

Owner – the individual, partnership, corporation, association, or other person who owns an assisted living or shared housing establishment. In the event an assisted living or shared housing establishment is operated by a person who leases or manages the physical plant, which is owned by another person, "owner" means the person who operates the assisted living or shared housing establishment, except that if the person who owns the physical plant is an affiliate of the person who operates the assisted living or shared housing establishment and has significant control over the day to day operations of the assisted living or shared housing establishment, the person who owns the physical plant shall incur jointly and severally with the owner all liabilities imposed on an owner under ~~the~~ Act. (Section 10 of the Act)

Person – any individual, partnership, corporation, association, municipality, political subdivision, trust, estate or other legal entity.

Physical restraint – any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body, that the individual cannot remove easily and that restricts freedom of movement or normal

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access to one's body.

Physician – a person licensed under the Medical Practice Act of 1987 to practice medicine in all of its branches. (Section 10 of the Act)

Physician's assessment – a comprehensive assessment that includes an evaluation of the resident's or prospective resident's physical, cognitive, and psychosocial condition, ~~completed by a physician~~*completed by a physician*. (Section 15 of the Act)

Residency termination – the relocation or transfer of a resident from an establishment.

Resident – a person residing in an assisted living or shared housing establishment. (Section 10 of the Act)

Resident's representative – a person, other than the owner, agent, or employee of an establishment or of the health care provider unless related to the resident, designated in writing by a resident to be his or her representative. This designation may be accomplished through the Illinois Power of Attorney Act, pursuant to the guardianship process under the Probate Act of 1975, or pursuant to an executed designation of representative form specified by the Department. (Section 10 of the Act)

Risk management – the process by which an establishment assesses and addresses potential liability.

Self – the individual or the individual's designated representative. (Section 10 of the Act)

Service plan – a written plan developed and mutually agreed upon by the provider and the resident; which ~~shall be~~*is* reviewed annually, or more often as the resident's condition, preferences, or service needs change; ~~and which shall serve~~*and which serves* as a basis for the service delivery contract between the provider and the resident. (Section 15 of the Act)

Severe mental illness – a condition that is characterized by the presence of a major mental disorder as classified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) (American Psychiatric Association,

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1994), where the individual is substantially disabled due to mental illness in the areas of self-maintenance, social functioning, activities of community living and work skills, and the disability specified is expected to be present for a period of not less than one year, but does not mean Alzheimer's disease and other forms of dementia based on organic or physical disorders. (Section 75(a)(6) of the Act)

Shared housing establishment or establishment – a publicly or privately operated free-standing residence for ~~16~~ or fewer persons, at least 80% of whom are 55 years of age or older and who are unrelated to the owners and one manager of the residence, where the following are provided:

services consistent with a social model that is based on the premise that the resident's unit is his or her own home;

community-based residential care for persons who need assistance with activities of daily living, including housing and personal, supportive, and intermittent health-related services available 24 hours per day, if needed, to meet the scheduled and unscheduled needs of a resident; and

mandatory services, whether provided directly by the establishment or by another entity arranged for by the establishment, with the consent of the resident or the resident's representative.

Shared housing establishment or establishment does not mean the following:

A home, institution, or similar place operated by the federal government or the State of Illinois.

A long term care ~~facility establishment~~ licensed under the Nursing Home Care Act or a facility licensed under the MR/DD Community Care Act. A ~~facility licensed under either of those Acts~~ long-term care establishment may, however, convert sections of the ~~facility establishment~~ to assisted living. If the ~~facility~~ long-term care establishment elects to do so, the ~~facility establishment~~ shall retain the Certificate of Need for its nursing beds that were converted.

A hospital, sanitarium, or other institution, the principal activity or business of which is the diagnosis, care, and treatment of human illness and that is required to be licensed under the Hospital Licensing Act.

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A ~~facility~~~~An establishment~~ for child care as defined in the Child Care Act of 1969.

A community living ~~facility~~~~establishment~~ as defined in the Community Living Facilities Licensing Act.

A nursing home or sanitarium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer in accordance with the creed or ~~tenets~~~~tenets~~ of a well-recognized church or religious denomination.

A ~~facility~~~~An establishment~~ licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act.

A supportive residence licensed under the Supportive Residences Licensing Act.

A life care ~~facility~~~~establishment~~ as defined in the Life Care Facilities Act; a life care ~~facility~~~~establishment~~ may apply under the Act to convert sections of the community to assisted living.

A free-standing hospice ~~facility~~~~establishment~~ licensed under the Hospice Program Licensing Act.

An assisted living ~~facility~~~~establishment~~.

A supportive living ~~facility~~~~establishment~~ as described in Section 5-5.01a of the Illinois Public Aid Code. (Section 10 of the Act)

Sheltered care facility – a location licensed as a sheltered care facility under the Nursing Home Care Act.

Significant change in the resident's condition – a change in the resident's condition that is substantial enough to indicate to a reasonable person that current supports and services are insufficient, taking into account the resident's wishes as addressed in any negotiated risk agreements in effect. A significant change is not

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a temporary change in the individual's health with a predictable course, such as a cold ~~or flu~~, or the gradual deterioration in the ability to carry out activities of daily living that accompanies the aging process.

Substantial compliance – meeting requirements, except for unimportant omissions or defects, given the particular circumstances involved.

Substantial failure – the failure to meet requirements, other than unimportant omissions or defects, given the particular circumstances involved.

Sufficient – same as adequate.

Supervision of self-administered medication – assisting the resident with self-administered medication using any combination of the following: reminding residents to take medication, reading the medication label to residents, checking the self-administered medication dosage against the label of the medication, confirming that residents have obtained and are taking the dosage as prescribed, and documenting in writing that the resident has taken (or refused to take) the medication. If residents are physically unable to open the container, the container may be opened for them. Supervision of self-administered medication shall be under the direction of a licensed health care professional. (Section 70 of the Act)

Total assistance – staff or another individual performs the entire activity of daily living without participation by the resident. (Section 10 of the Act)

Unit – a separate and physically identifiable space that is used for occupancy.

Valid license – a license that is unsuspended, unrevoked, and unexpired.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

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.

- 2) American Psychiatric Association, Diagnostic and Statistical Manual of Mental ~~Disorders~~ ~~Disorder~~, Fourth Edition (DSM-IV) (1994), which may be obtained from the American Psychiatric Association, 1000 Wilson Blvd., Suite 1825, Arlington, Virginia 22209~~1400 K Street, N.W., Washington, D.C. 20005.~~
- b) The following federal guidelines are incorporated in this Part: ADA Accessibility Guidelines (ADAAG), July 2004~~January 1998~~, which may be obtained from the U.S. Access Board, 1331~~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 editions or amendments~~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) Nurse~~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) MR/DD Community Care Act [210 ILCS 47]
 - G)F) Probate Act of 1975 [755 ILCS 5]

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- ~~H)G)~~ Illinois Public Aid Code [305 ILCS 5]
- ~~D)H)~~ Illinois Administrative Procedure Act [5 ILCS 100]
- ~~J)H)~~ Health Care Worker Background Check Act [225 ILCS 46]
- ~~J)~~ ~~Criminal Code of 1961 [720 ILCS 5]~~
- ~~K)~~ ~~Cannabis Control Act [720 ILCS 550]~~
- ~~K)H)~~ Powers of Attorney for Health Care Law [755 ILCS 45/Art. IV]
- ~~L)M)~~ Health Care Surrogate Act [755 ILCS 40]
- ~~N)~~ ~~Illinois Controlled Substances Act [720 ILCS 570]~~
- ~~M)O)~~ Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135]
- ~~N)P)~~ Hospice Program Licensing Act [210 ILCS 60]
- ~~O)Q)~~ Freedom of Information Act [5 ILCS 140]
- ~~P)R)~~ Alzheimer's Disease and Related Dementias Special Care Disclosure Act [210 ILCS 4]
- ~~Q)S)~~ Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55]
- ~~R)T)~~ Code of Civil Procedure [735 ILCS 5]
- ~~S)U)~~ Dietetic and Nutrition Services Practice Act [225 ILCS 30]
- ~~T)V)~~ Community Living Facilities Licensing Act [210 ILCS 35]
- ~~U)W)~~ Supportive Residences Licensing Act [210 ILCS 65]
- ~~V)X)~~ Life Care Facilities Act [210 ILCS 40]

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~~Y) Uniform Conviction Information Act [20 ILCS 2635]~~

~~Z) Criminal Jurisprudence Act [720 ILCS 115]~~

~~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)

viii) Health Care Worker Background Check Code (77 Ill. Adm. Code 955)

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 295.500 Application for License

a) *An applicant shall provide the following information, on forms provided by the*

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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 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 two years of a facility licensed under the Nursing Home Care Act, the MR/DD Community 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*

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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 ~~the Act and this~~ Part, on whom personal service of all notices and orders shall be 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;*~~
- ~~10)11) *Information about the mandatory and optional services to be provided at the establishment;*~~
- ~~11)12) *Proof of compliance with applicable State and local residential standards, as evidenced by completion of the Department's Code CertificationCertificate of Compliance form;*~~
- ~~12)13) *A copy of the standard contract offered to residents;*~~

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- ~~13)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;~~
- ~~14)16)~~ A completed Alzheimer's Disease and Related Dementias Special Care Disclosure form; and
- ~~15)17)~~ A schematic drawing of the establishment.
- b) The application shall indicate a request for either standard licensure or floating licensure. An application for a floating license shall comply with Section 32 of the Act and Section 295.1110.
- c) 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.
- d) 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 shall maintain a bond or restricted account that guarantees the return of the resident's entrance fees or the unused portion of his or her deposit if the establishment ceases to operate.
- e)b) To support regulatory activities necessary to implement the Act, applications shall be accompanied by a nonrefundable fee of:
- 1) \$1,000 for an assisted living establishment and \$10 per licensed unit; or
 - 2) \$500 for a shared housing establishment.

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- ~~f)e)~~ If any of the information in the application changes during the application process, the applicant shall notify the Department, in writing, of those changes. ~~The Such~~ written notification will become a part of the licensee's file.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 295.600 Issuance of an Initial Regular License

- a) *Upon receipt and review of an application for a license and review of the applicant establishment, the Director may issue a license if he or she finds:*
- 1) *That the individual applicant, or the corporation, partnership, or other entity if the applicant is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of an establishment by virtue of financial capacity, appropriate business or professional experience, a record of lawful compliance with lawful orders of the Department and lack of revocation of a license issued under ~~the~~ Act, ~~or~~ the Nursing Home Care Act, or the MR/DD Community Care Act during the previous five years;*
 - 2) *That the establishment is under the supervision of a full-time manager who meets the requirements of Section 295.3010 ~~of this Part~~;*
 - 3) *That the establishment has staff sufficient in number with qualifications, adequate skills, education, and experience to meet the 24-hour scheduled and unscheduled needs of residents and who participate in ongoing training to serve the resident population;*
 - 4) *That all employees who are subject to direct care staff meet the requirements of the Health Care Worker Background Check Act meet the requirements of that Act and the requirements of the Health Care Worker Background Check Code;*
 - 5) *That the applicant is in substantial compliance with ~~the~~ Act and this Part;*
 - 6) *That the applicant pays all required fees; and*
 - 7) *That, if the applicant establishment offers, advertises or markets to provide*

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specialized services for individuals with Alzheimer's disease and related dementias through an Alzheimer's special care program, *the applicant has provided an accurate disclosure document to the Department in accordance with the Alzheimer's Disease and Related Dementias Special Care Disclosure Act and in substantial compliance with Section 150 of the Act and Section 295.4060.*

- b) The Department ~~will~~shall issue a regular license within 120 days after receipt of an application that meets the requirements of the Act and this Section. ~~This time frame may be extended during the period from January 1, 2001 to January 1, 2002.~~
- c) ~~The~~The license shall state the ~~number of resident units and~~ physical location of the establishment, the date the license was issued, and the expiration date of the license of the license. The license shall also state the number of resident units.
- d) *All regular licenses shall be valid for one year.*
- e) *Each license shall be issued only for the premises and persons named in the application, and shall not be transferable or assignable. (Section 35 of the Act)*
- f) *As a condition of licensure under the Act and this Part, the director of an establishment must participate in at least 20 hours of training every two years to assist him or her in better meeting the needs of the residents of the establishment and managing the operation of the establishment.*
- g)f) After the license is issued, the licensee shall advise the Department within 30 days after any changes in the information required in Section 295.500(a)(1), (2), (4), (6), (9), or (10) ~~of this Part~~.
- h)g) The license shall be posted in public view in the establishment.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 295.700 Issuance of a Renewal License

- a) *At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license, in such form and containing such information as the Department requires. The application shall be*

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accompanied by the fee prescribed in Section 295.500. *If the application is approved and the establishment is in substantial compliance with all other licensure requirements, the Department may renew the license for an additional period of 2 years at the request of the licensee~~license shall be renewed for an additional one-year period.~~*

- b) If a licensee whose license has been renewed for 2 years under this Section subsequently fails to meet any of the conditions set forth in the Act and this Part, then, in addition to any other sanctions that the Department may impose under the Act and this Part, the Department shall revoke the 2-year license and replace it with a one-year license until the licensee again meets all of the conditions set forth in Section 45 of the Act and this Part.*
- c)~~b)~~ If the application for renewal is not timely filed in accordance with subsection (a) of this Section, the Department shall so inform the licensee.*
- d)~~e)~~ If appropriate, the renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Disease and Related Dementias Special Care Disclosure Act and Section 295.1100 ~~of this Part~~. (Section 45 of the Act)*

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 295.1100 Alzheimer's Disease and Related Dementias Special Care Disclosure

An establishment that offers, advertises or markets to provide care for persons with Alzheimer's disease and related dementias through an Alzheimer's special care program shall disclose to the Department and~~Department or~~ to a resident or potential or actual resident of the establishment the following information in writing ~~on request of the Department or resident~~:

- a) The form of care or treatment that distinguishes the establishment as suitable for persons with Alzheimer's disease and related dementias;
- b) The philosophy of the establishment concerning the care or treatment of persons with Alzheimer's disease and related dementias;
- c) The establishment's pre-admission, admission, and discharge~~residency termination~~ procedures;

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- d) *The establishment's assessment, care planning, and implementation guidelines in the care and treatment of persons with Alzheimer's disease and related dementias, including whether residents~~individuals~~ are or are not monitored about eating, drinking, and personal hygiene; whether residents~~individuals~~ will be monitored for potentially dangerous behavior while in their rooms; and whether a resident representative will be contacted with concerns that might require a change in the service plan;*
- e) *The establishment's minimum and maximum staffing ratios, specifying the general licensed health care provider to resident ratio and the trainee health care provider to resident ratio;*
- f) *The establishment's physical environment, including whether doors are monitored;*
- g) *Activities available to residents at the establishment;*
- h) *The role of family members in the care of residents at the establishment; and*
- i) *The costs of care and treatment under the program. (Section 15 of the Alzheimer's Disease and Related Dementias Special Care Disclosure Act)*

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 295.1110 Floating Licenses

- a) A floating license is an assisted living or shared housing establishment license issued by the Department in accordance with Section 295.600 or 295.700, which applies to any number of individual living units within the establishment up to, but not including, total capacity. (Section 32 of the Act) A floating license authorizes the establishment to transfer licensure from one individual living unit to another, in accordance with Section 32 of the Act and this Section.
- b) A floating license may be requested, on forms provided by the Department, with either an initial licensure application or a renewal licensure application. The application must specify the number of individual living units within the establishment that are to be licensed (Section 32 of the Act) and shall include a list of the living units that will be designated as licensed living units under the floating license.

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- c) Sections 25 and 32 of the Act and Section 295.400 of this Part prohibit any person from *establishing, operating, maintaining, or offering an establishment as an assisted living establishment or shared housing establishment, as defined by the Act, unless and until he or she obtains a valid license, which remains unsuspended, unrevoked, and unexpired.* (Section 25 of the Act)
- d) A location for which a floating license is requested shall, at all times, meet the following qualifications:
- 1) *80% of the residents are at least 55 years of age or older;*
 - 2) *The location is operated as housing for the elderly, as demonstrated by one of the following:*
 - A) *The location is currently operating entirely as housing for the elderly, is not providing assisted living services, and is not in violation of Section 295.400; or*
 - B) *Some of the living units are currently licensed as assisted living or shared housing, and the remaining living units are operated as housing for the elderly;*
 - 3) *The location meets the construction and operating standards contained in Section 20 of the Act and Subpart I of this Part;*
 - 4) *The location must have staff adequate to meet the scheduled and unscheduled needs of the residents residing in licensed living units; and*
 - 5) *All staff providing services to licensed living units must meet the requirements of the Act and this Part. (Section 32 of the Act)*
- e) An establishment that is issued a floating license shall not designate more than the number of living units indicated on the license as licensed living units. To be designated as a licensed living unit, *the living unit and the living unit's resident shall meet the requirements of the Act and this Part.* (Section 32 of the Act)

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- f) All mandatory services must be made available to residents of licensed living units, in accordance with Section 10 of the Act and Section 295.4020 of this Part. Residents of licensed living units may receive any optional services permitted under the establishment's license.
- g) Establishments may provide services under the Act and this Part only in the individual living units designated as licensed units. (Section 32 of the Act)
- h) Designation as a licensed unit may be temporary to accommodate a resident's changing needs without requiring a resident to move. (Section 32 of the Act) A living unit that is temporarily designated as a licensed living unit shall meet the requirements of the Act and this Part.
- i) An establishment with a floating license must keep a current written list of those units designated under the floating license. (Section 32 of the Act) The establishment shall provide the Department with a list of designated units in accordance with subsections (m) and (n).
- j) If a resident elects to receive assisted living services in a unit that is not licensed and the unit qualifies for licensure under this Section, the establishment must notify the resident that the unit must be licensed and the requirements of the Act and this Part must be met before assisted living services can be provided to residents in that unit. (Section 32 of the Act)
- k) The establishment shall maintain records in accordance with Sections 295.7000 and 295.7010 for all licensed living units and all residents residing in licensed living units.
- l) The Department shall conduct an annual unannounced on-site visit at each assisted living and shared housing establishment to determine compliance with the Act and this Part. Additional visits may be conducted without prior notice to the assisted living or shared housing establishment. (Section 110(a) of the Act)
- m) Upon the initiation of an initial licensing inspection or annual inspection, the establishment shall provide to the Department a list of the units designated under the floating license in which residents are receiving services subject to the Act. (Section 32 of the Act)

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- n) Upon the initiation of a complaint investigation, the establishment shall provide to the Department a list of the units designated under the floating license in which residents were receiving services subject to the Act at the time that the situation being investigated was alleged to have occurred. (Section 32 of the Act)

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART C: PERSONNEL

Section 295.3040 Health Care Worker Background Check

An establishment shall comply with the Health Care Worker Background Check Act and the Health Care Worker Background Check Code.

- a) ~~The establishment shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):~~
- ~~1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));~~
 - ~~2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));~~
 - ~~3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5, and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));~~
 - ~~4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of~~

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- ~~the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));~~
- 5) ~~Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));~~
- 6) ~~Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));~~
- 7) ~~Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));~~
- 8) ~~Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));~~
- 9) ~~Criminal sexual assault or criminal sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));~~
- 10) ~~Abuse and gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));~~
- 11) ~~Criminal abuse or neglect of an elderly or disabled person (Section 12-21~~

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~~of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));~~

- 12) ~~Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));~~
- 13) ~~Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));~~
- 14) ~~Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));~~
- 15) ~~Financial exploitation of an elderly person or a person with a disability (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));~~
- 16) ~~Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));~~
- 17) ~~Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));~~
- 18) ~~Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);~~
- 19) ~~Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));~~
- 20) ~~Criminal trespass to a residence (Section 19-4 of the Criminal Code of~~

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- ~~1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));~~
- 21) ~~Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));~~
- 22) ~~Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));~~
- 23) ~~Armed violence—elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));~~
- 24) ~~Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));~~
- 25) ~~Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));~~
- 26) ~~Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, delivery to person under 18, violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 ½, pars. 705, 705.1, 705.2, 707, and 709)); or~~
- 27) ~~Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407, and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 ½, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1));~~
- b) *The establishment shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) through (27) of this Section unless the applicant,*

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~~employee or employer obtains a waiver pursuant to this Section. (Section 25(a) of the Health Care Worker Background Check Act)~~

- e) ~~An establishment shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the establishment becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) through (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that an establishment has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)~~

- d) For the purposes of this Section:

~~"Applicant" means an individual seeking employment with an establishment who has received a bona fide conditional offer of employment.~~

~~"Conditional offer of employment" means a bona fide offer of employment by an establishment to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) through (27) of this Section.~~

~~"Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.~~

~~"Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)~~

- e) For purposes of the Health Care Worker Background Check Act, the establishment shall establish a policy defining which employees provide direct care. In making this determination, the establishment shall consider the following:
- 1) The employee's assigned job responsibilities as set forth in the employee's job description;

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- 2) ~~Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and~~
 - 3) ~~Whether the employee's responsibilities include physical contact with residents.~~
- f) ~~When the establishment makes a conditional offer of employment to an applicant who is not exempt under subsection (w) of this Section for a position with duties that involve direct care for residents, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry and has had a UCIA criminal history record check within the last 2 months, the employer need not initiate another check.~~
- g) ~~The establishment shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)~~
- h) ~~The establishment may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.~~
- i) ~~The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint based UCIA criminal history record check is made:~~
- 1) ~~That the establishment shall request or have requested on its behalf a non-fingerprint based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.~~
 - 2) ~~That the applicant or employee has a right to obtain a copy of the criminal record report from the establishment, challenge the accuracy and completeness of the report, and request a waiver in accordance with this Section.~~
 - 3) ~~That the applicant, if hired conditionally, may be terminated if the non-fingerprint based criminal records report indicates that the applicant has a~~

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~~record of conviction of any of the criminal offenses enumerated in subsections (a)(1) through (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.~~

- 4) ~~That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) through (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section.~~
- 5) ~~That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) through (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)~~
- j) ~~An establishment may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)~~
- k) ~~An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) through (27) of this Section may request that the establishment or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)~~
- l) ~~An establishment having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Health Care Worker Background Check Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The establishment may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until~~

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~~the results of the fingerprint based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)~~

- m) ~~An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:~~
- 1) ~~A completed fingerprint based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and~~
 - 2) ~~A certified check, money order or establishment check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint based UCIA criminal records check.~~
- n) ~~The Department may accept the results of the fingerprint based UCIA criminal records check instead of the items required by subsections (m)(1) and (2). (Section 40(a-5) of the Health Care Worker Background Check Act)~~
- o) ~~An application for a waiver shall be denied unless the applicant meets the following requirements and submits documentation thereof with the waiver application:~~
- 1) ~~Except in the instance of payment of court imposed fines or restitution in which the applicant is adhering to a payment schedule, the applicant shall have met obligations to the court and under terms of parole (i.e., probation has been successfully completed); and~~
 - 2) ~~The applicant shall have satisfactorily completed a drug and/or alcohol recovery program, if drugs and/or alcohol were involved in the offense.~~
- p) ~~The Department may grant a waiver based on mitigating circumstances, which may include:~~
- 1) ~~The age of the individual at which the crime was committed;~~
 - 2) ~~The circumstances surrounding the crime;~~
 - 3) ~~The length of time since the conviction;~~

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- 4) ~~The applicant's or employee's criminal history since the conviction;~~
 - 5) ~~The applicant's or employee's work history;~~
 - 6) ~~The applicant's or employee's current employment references;~~
 - 7) ~~The applicant's or employee's character references;~~
 - 8) ~~Nurse Aide Registry records; and~~
 - 9) ~~Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents, which may include, but is not limited to, the applicant's or employee's participation in a drug/alcohol rehabilitation program and continued involvement in recovery; the applicant's or employee's participation in anger management or domestic violence prevention programs; the applicant's or employee's status on nurse aide registries in other states; the applicant's or employee's criminal history in other states; or the applicant's or employee's successful completion of all outstanding obligations or responsibilities imposed by or to the court. (Section 40(b) of the Health Care Worker Background Check Act)~~
- q) ~~Waivers will not be granted to individuals who have not met the following time frames—"Disqualifying" refers to offenses listed in subsections (a)(1) to (27) of this Section:~~
- 1) ~~Single disqualifying misdemeanor conviction — waiver consideration no earlier than one year after the conviction date;~~
 - 2) ~~Two to three disqualifying misdemeanor convictions — waiver consideration no earlier than three years after of the most recent conviction date;~~
 - 3) ~~More than three disqualifying misdemeanor convictions — waiver consideration no earlier than five years after of the most recent conviction date;~~

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- 4) ~~Single disqualifying felony convictions – waiver consideration no earlier than three years after the conviction date;~~
 - 5) ~~Two to three disqualifying felony convictions – waiver consideration no earlier than five years after the most recent conviction date;~~
 - 6) ~~More than three disqualifying felony convictions – waiver consideration no earlier than ten years after the most recent conviction date.~~
- r) ~~Waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the following offenses:~~
- 1) ~~Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2]);~~
 - 2) ~~Murder, homicide, manslaughter, or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3]);~~
 - 3) ~~Kidnaping or aggravated kidnaping (Sections 10-1 and 10-2 of the Criminal Code of 1961 [720 ILCS 5/10-1 and 10-2]);~~
 - 4) ~~Aggravated battery, heinous battery, or infliction of great bodily harm (Sections 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.6, and 12-4.7 of the Criminal Code 1961 [720 ILCS 5/12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.6, and 12-4.7]);~~
 - 5) ~~Criminal sexual assault or aggravated criminal sexual assault (Sections 12-13, 12-14, and 12-14.1 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, and 12-4.1]);~~
 - 6) ~~Criminal sexual abuse or aggravated criminal sexual abuse (Sections 12-15 and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-15 and 12-16]);~~
 - 7) ~~Abuse and gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19]);~~

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- 8) ~~Criminal abuse or neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21]);~~
 - 9) ~~Financial exploitation of an elderly person or a person with a disability (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3]);~~
 - 10) ~~Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1]);~~
 - 11) ~~Armed robbery (Section 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-2]); and~~
 - 12) ~~Aggravated vehicular hijacking, aggravated robbery (Sections 18-4 and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-4 and 18-5]).~~
- s) ~~The Director of Public Health may grant a waiver to an individual who does not meet the requirements of subsection (o), (q), or (r), based on mitigating circumstances (see subsection (p)). (Section 40(b) of the Health Care Worker Background Check Act)~~
 - t) ~~An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint based records check in accordance with subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)~~
 - u) ~~An establishment is not obligated to employ or offer permanent employment to an applicant, or to retain an employee, who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)~~
 - v) ~~An establishment may retain the individual in a direct care position if the individual presents clear and convincing evidence to the establishment that the~~

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~~non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) through (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but is not limited to:~~

- ~~1) certified court records;~~
 - ~~2) written verification from the State's Attorney's office that prosecuted the conviction at issue;~~
 - ~~3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;~~
 - ~~4) a signed affidavit from the individual concerning the validity of the report;
or~~
 - ~~5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.~~
- w) *This Section shall not apply to:*
- ~~1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;~~
 - ~~2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or~~
 - ~~3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)~~
- x) *The establishment shall retain on file for a period of 5 years records of criminal records requests for all employees. The establishment shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the*

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~~*duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)*~~

- y) ~~The establishment shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART G: RESIDENT AND ESTABLISHMENT RECORDS

Section 295.7010 Establishment Records

- a) The establishment shall maintain the following records:
- ~~1)a)~~ Reports of known resident injury requiring a physician's intervention;
 - ~~2)b)~~ Reports of abuse, neglect, or financial exploitation that are submitted to the Department pursuant to Section 295.6010;
 - ~~3)e)~~ Incident and accident reports that are required to be submitted to the Department;
 - ~~4)d)~~ Documentation of compliance with Section 295.3040 (Health Care Worker Background Check); and
 - ~~5)e)~~ Quality improvement program.
- b) An establishment holding a floating license shall maintain all records required by Section 295.7000 and this Section and any other documentation required by this Part. The records shall be maintained for no fewer than three years following the removal of a unit's designation as a licensed living unit. The records shall also include copies of the written list of the units designated under the floating license for each day of the three years. (Section 32 of the Act)

(Source: Amended at 36 Ill. Reg. _____, effective _____)