

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Department of Health

DIVISION: N/A

RULE IDENTIFIER: 216-RICR-40-10-2

RULE TITLE: Licensing of Assisted Living Residences

REASON FOR RULEMAKING: The Rhode Island Department of Health ("RIDOH") is proposing to amend the aforementioned regulations, 216-RICR-40-10-2, primarily to include the provisions of Public Law 23-353 related to an informal dispute resolution process in assisted living residences (ALRs). Additional amendments are proposed related to variances.

ANY FINDINGS REQUIRED BY LAW AS A PREEQUISITE TO THE EFFECTIVENESS OF THE RULE: N/A

TESTIMONY AND COMMENTS:

- RIDOH received a comment inquiring the following:
 - Who makes up the resolution team?
 - How many members make up the team?
 - What are the qualifications of the team members?
 - Explain the process, i.e. who gives testimony to the team.
 - Can the management of the community call witnesses or submit written testimony?
 - Is there a neutral part of the team?
 - If so, how is that neutral party selected?
 - Is there an appeal process?
 - What is the process?
 - Can the licensee residence avail themselves of the services of an attorney to represent the interest of the community?
 - RIDOH notes that CHFR has a protocol in place that addresses purpose, process, and responsibilities. The Center for Medicaid and Medicare services (CMS) has required an IDR/IIDR process for nursing home citations for years. RIDOH is simply utilizing the Federal process guidelines for assisted livings.
- RIDOH received a comment requesting to define licensed nurse as it applies to the regulation. RIDOH notes that the definition of "Qualified licensed assisted

living staff members" points to the statutory definitions of nursing assistant, licensed practical nurse and registered nurse.

- RIDOH received a comment inquiring whether § 2.4.34 applies to “Limited Health provision or regular Assisted Living Regulation.” RIDOH notes that this section applies to any ALR that can care for the resident.
- RIDOH received a comment inquiring:
 - Is the assisted living residence staff permitted to change the Foley catheters if dislodged or is a physician required to perform the procedure?
 - Are residents housed in a Memory Care Unit permitted to have a Foley Catheter?
 - If so, doesn't this pose a health(infection control) and safety risk?
 - If a Foley catheter dislodges on a shift when a license nurse is not in the building, does the resident have to be transported to the ER?
 - RIDOH notes that the facility must provide a plan for the care for that foley catheter, which would address the issues presented.

CHANGES TO THE TEXT OF THE RULE: No changes were made to the text of the rule beyond what was initially proposed.

REGULATORY ANALYSIS:

In development of this rule, consideration was given to:

- 1) Alternative approaches;
- 2) Overlap or duplication with other statutory and regulatory provisions; and
- 3) Significant economic impact on small business

No alternative approach, duplication or overlap was identified based on available information. RIDOH has determined that the benefits of the rule justify its costs.