

IC 12-28-4

Chapter 4. Residential Facilities for Developmentally Disabled Individuals and Mentally Ill Individuals

IC 12-28-4-1

Application of chapter

Sec. 1. This chapter applies to residential facilities for both individuals with a developmental disability and individuals with a mental illness.

As added by P.L.2-1992, SEC.22. Amended by P.L.99-2007, SEC.137.

IC 12-28-4-2

Planning authority defined

Sec. 2. As used in this chapter, "planning authority" means the agency of county, city, or town government that performs the planning function under IC 36-7 for the land on which a residential facility may be placed.

As added by P.L.2-1992, SEC.22.

IC 12-28-4-3

Staffing; daily living, self-help, and social skills needs of recipients; Medicaid; federal financial participation

Sec. 3. Residential facilities for individuals with a developmental disability must have sufficient qualified training and habilitation support staff so that the residential facility, regardless of organization or design, has appropriately qualified and adequately trained staff (not necessarily qualified mental retardation professionals (as defined in 42 CFR 442.401)) to conduct the activities of daily living, self-help, and social skills that are minimally required based on each recipient's needs and, if appropriate, for federal financial participation under the Medicaid program.

As added by P.L.2-1992, SEC.22. Amended by P.L.99-2007, SEC.138.

IC 12-28-4-4

Staffing limitations for facilities certified for financial participation under Medicaid program

Sec. 4. For residential facilities for individuals with a developmental disability that are certified for financial participation under the Medicaid program, the division of disability and rehabilitative services shall recommend staffing limitations consistent with the program needs of the residents as a part of the office of Medicaid policy and planning's rate setting procedures.

As added by P.L.2-1992, SEC.22. Amended by P.L.4-1993, SEC.208; P.L.5-1993, SEC.221; P.L.141-2006, SEC.69; P.L.99-2007, SEC.139.

IC 12-28-4-5

Staffing limitations for facilities not certified for financial

participation under Medicaid program

Sec. 5. For residential facilities for individuals with a developmental disability that are not certified for financial participation under the Medicaid program, the division of disability and rehabilitative services shall approve appropriate staffing limitations consistent with the program needs of the residents as a part of the division's rate setting procedures.

As added by P.L.2-1992, SEC.22. Amended by P.L.4-1993, SEC.209; P.L.5-1993, SEC.222; P.L.141-2006, SEC.70; P.L.99-2007, SEC.140.

IC 12-28-4-6

Staffing limitations; memorandum of agreement

Sec. 6. The office of Medicaid policy and planning and the division of disability and rehabilitative services shall enter into a memorandum of agreement that defines the staffing limitations to be used by the office of Medicaid policy and planning in establishing reimbursement rates. The staffing limitations under section 5 of this chapter may not exceed the staffing limitations defined by the memorandum of agreement between the office of Medicaid policy and planning and the division of disability and rehabilitative services under section 4 of this chapter.

As added by P.L.2-1992, SEC.22. Amended by P.L.4-1993, SEC.210; P.L.5-1993, SEC.223; P.L.141-2006, SEC.71.

IC 12-28-4-7

Zoning ordinances; residential facilities for individuals with a mental illness

Sec. 7. (a) A zoning ordinance (as defined in IC 36-7-1-22) may not exclude a residential facility for individuals with a mental illness from a residential area solely because the residential facility is a business or because the individuals residing in the residential facility are not related. The residential facility may be required to meet all other zoning requirements, ordinances, and laws.

(b) A zoning ordinance may exclude a residential facility for individuals with a mental illness from a residential area if the residential facility will be located within three thousand (3,000) feet of another residential facility for individuals with a mental illness, as measured between lot lines.

As added by P.L.2-1992, SEC.22. Amended by P.L.99-2007, SEC.141.

IC 12-28-4-8

Zoning ordinances; residential facilities for individuals with a developmental disability

Sec. 8. (a) A residential facility for individuals with a developmental disability:

- (1) for not more than eight (8) individuals with a developmental disability; and
- (2) established under a program authorized by

IC 12-11-1.1-1(e)(1) or IC 12-11-1.1-1(e)(2);
is a permitted residential use that may not be disallowed by any zoning ordinance (as defined in IC 36-7-1-22) in a zoning district or classification that permits residential use.

(b) A zoning ordinance may only require a residential facility described in subsection (a) to meet the same:

- (1) zoning requirements;
- (2) developmental standards; and
- (3) building codes;

as other residential structures or improvements in the same residential zoning district or classification.

As added by P.L.2-1992, SEC.22. Amended by P.L.272-1999, SEC.48; P.L.99-2007, SEC.142.

IC 12-28-4-9

Covenants created before April 1, 1988, restricting residential facilities for persons with a developmental disability or mental illness

Sec. 9. (a) This section applies to each restriction, reservation, condition, exception, or covenant that is created before April 1, 1988, in any subdivision plat, deed, or other instrument of, or pertaining to, the transfer, sale, lease, or use of property.

(b) A restriction, a reservation, a condition, an exception, or a covenant in a subdivision plat, deed, or other instrument of, or pertaining to, the transfer, sale, lease, or use of property that would permit the residential use of property but prohibit the use of that property as a residential facility for individuals with a developmental disability or individuals with a mental illness:

- (1) on the ground that the residential facility is a business;
- (2) on the ground that the individuals residing in the residential facility are not related; or
- (3) for any other reason;

is, to the extent of the prohibition, void as against the public policy of the state.

As added by P.L.2-1992, SEC.22. Amended by P.L.99-2007, SEC.143.

IC 12-28-4-10

Covenants created on or after April 1, 1988, restricting residential facilities for persons with a developmental disability or mental illness

Sec. 10. (a) This section applies to each restriction, reservation, condition, exception, or covenant that is created on or after April 1, 1988, in any subdivision plat, deed, or other instrument of, or pertaining to, the transfer, sale, lease, or use of property.

(b) A restriction, a reservation, a condition, an exception, or a covenant in a subdivision plat, deed, or other instrument of, or pertaining to, the transfer, sale, lease, or use of property that would permit the residential use of property but prohibit the use of that property as a residential facility for individuals with a developmental

disability or individuals with a mental illness:

- (1) on the ground that the residential facility is a business;
- (2) on the ground that the individuals residing in the residential facility are not related; or
- (3) for any other reason;

is, to the extent of the prohibition, void as against the public policy of the state.

As added by P.L.2-1992, SEC.22. Amended by P.L.99-2007, SEC.144.

IC 12-28-4-11

Repealed

(Repealed by P.L.6-1995, SEC.39.)

IC 12-28-4-12

Establishment of facilities by division; priority given counties with low ratios of resident facility beds; recruiting private operators

Sec. 12. (a) Subject to the availability of money and consistent with needs assessment, the division of disability and rehabilitative services shall give priority to the establishment of residential facilities, other than the facilities described in section 3 of this chapter, in counties in which the ratio of the number of residential facility beds to county population is in the lowest twenty-five percent (25%) when compared to all other Indiana counties. The division of disability and rehabilitative services may operate residential facilities established under this section.

(b) Before the division of disability and rehabilitative services takes any steps to establish a residential facility under this section, the division shall place at least two (2) legal advertisements in a newspaper having a general circulation in the county. These advertisements must be aimed at recruiting private parties to serve as operators of residential facilities in the county. The advertisements must be published at intervals at least one (1) month apart.

As added by P.L.2-1992, SEC.22. Amended by P.L.4-1993, SEC.212; P.L.5-1993, SEC.225; P.L.141-2006, SEC.72.

IC 12-28-4-13

Development and lease effort

Sec. 13. (a) The division of disability and rehabilitative services may operate a program known as the development and lease effort. Under the program, the division of disability and rehabilitative services may develop contracts under which the state agrees to lease buildings from private parties for use as residential facilities for individuals with a mental illness or individuals with autism or other individuals with a developmental disability. Notwithstanding any other law, each contract may include provisions that ensure the following:

- (1) That the state will lease a building for not more than ten (10) years for use as a residential facility for individuals with autism.

(2) That the state will retain the right to extend the term of the lease for not more than ten (10) years at the conclusion of the first ten (10) years.

(3) That the state will retain the right to sublease the building to a person who agrees to operate the building as a residential facility for individuals with autism under this chapter.

(b) Leases entered into under this section are subject to the approval of the Indiana department of administration, the attorney general, the governor, and the budget agency, as provided by law.
As added by P.L.2-1992, SEC.22. Amended by P.L.4-1993, SEC.213; P.L.5-1993, SEC.226; P.L.141-2006, SEC.73; P.L.99-2007, SEC.145.

IC 12-28-4-14

Rules

Sec. 14. The community residential facilities council may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.2-1992, SEC.22.