

TITLE 39  
HEALTH AND SAFETY

CHAPTER 33  
IDAHO RESIDENTIAL CARE OR ASSISTED LIVING ACT

39-3301. LEGISLATIVE INTENT AND DECLARATION. The purpose of a residential care or assisted living facility in Idaho is to provide a humane, safe, and homelike living arrangement for adults who need some assistance with activities of daily living and personal care but do not require the level of care identified under section 39-1301(b), Idaho Code, other than for short exceptional stays meaning a treatment window designed to allow a resident to receive treatment for a short term acute episode as determined by a licensed professional nurse.

The state will encourage the development of facilities tailored to the needs of individual populations which operate in integrated settings in communities where sufficient supportive services exist to provide the resident, if appropriate, an opportunity to work and be involved in recreation and education opportunities. Employment, recreational and educational opportunities for people with disabilities shall be offered in the most integrated setting consistent with their needs.

A residential care or assisted living facility shall be operated and staffed by individuals who have the knowledge and experience required to provide safe and appropriate services to all residents of the facility.

The administrator of the facility shall ensure that an objective, individualized assessment to determine resident needs is conducted, develop a comprehensive negotiated plan of care to meet those needs, deliver appropriate services to meet resident needs, and ensure resident rights are honored.

[39-3301, added 1990, ch. 116, sec. 2, p. 241; am. 1993, ch. 373, sec. 1, p. 1346; am. 2000, ch. 274, sec. 9, p. 809; am. 2005, ch. 280, sec. 3, p. 880.]

39-3302. DEFINITIONS. As used in this chapter:

(1) "Abuse" means a nonaccidental act of sexual, physical or mental mistreatment or injury of a resident through the action or inaction of another individual.

(2) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(3) "Administrator" means an individual, properly licensed by the bureau of occupational licensing, who is responsible for day-to-day operation of a residential care or assisted living facility.

(4) "Adult" means a person who has attained the age of eighteen (18) years.

(5) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of mentally ill, developmentally disabled, or elderly residents.

(6) "Assessment" means the conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral needs. The assessment criteria shall be developed by the department and residential care or assisted living council.

(7) "Authorized provider" in this chapter means an individual who is a nurse practitioner or clinical nurse specialist or a physician assistant.

(8) "Board" means the board of health and welfare.

(9) "Chemical restraint" means a medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition.

(10) "Core issues" means abuse, neglect, exploitation, inadequate care, a situation in which the facility has operated for more than thirty (30) days without a licensed administrator designated the responsibility for the day-to-day operations of the facility, inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system, and surveyors denied access to records, residents or facilities.

(11) "Department" means the Idaho department of health and welfare.

(12) "Director" means the director of the Idaho department of health and welfare.

(13) "Exploitation" means the misuse of a resident's funds, property, resources, identity or person for profit or advantage.

(14) "Facility" means a residential care or assisted living facility.

(15) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board, or other agency thereof.

(16) "Inadequate care" occurs when a facility fails to provide the services required to meet the terms of the negotiated service agreement or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment; or engages in violations of resident's rights, or takes residents who have been admitted in violation of the provisions of section 39-3307, Idaho Code.

(17) "License" means a basic permit to operate a residential care or assisted living facility.

(18) "Licensee" means the owner of a license to operate a residential care or assisted living facility under this chapter.

(19) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(20) "Neglect" means failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident.

(21) "Negotiated service agreement" means the agreement reached by the resident and/or their representative and the facility, based on the assessment, physician's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident.

(22) "Personal assistance" means the provision by the staff of the facility of one (1) or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

(23) "Political subdivision" means a city or county.

(24) "Resident" means an adult who lives in a residential care or assisted living facility.

(25) "Residential care or assisted living facility" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more adults not related to the owner.

(26) "Room and board" means lodging and meals.

(27) "Substantial compliance" means a facility has no core issue deficiencies.

(28) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's general whereabouts, and assistance with activities of daily living. The administrator is responsible for providing appropriate supervision based on each resident's negotiated service agreement or other legal requirements.

(29) "Supportive services" means the specific services that are provided to the resident in the community.

[39-3302, added 1990, ch. 116, sec. 2, p. 241; am. 1993, ch. 373, sec. 2, p. 1347; am. 1996, ch. 207, sec. 1, p. 633; am. 2000, ch. 274, sec. 10, p. 810; am. 2005, ch. 280, sec. 4, p. 881.]

39-3303. PAYMENT LEVELS. (1) Clients of the department who are receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a residential care or assisted living facility will be assessed by the department regarding their need for specific types of services and supports. This assessment will determine the reimbursement rate to the service provider.

Eligible participants must be allowed to choose the facility or services that are appropriate to meet their medical needs and financial ability to pay. The department shall promulgate rules outlining the payment policy and calculations for clients of the department through negotiated rulemaking.

(2) Residents who are not clients of the department shall:

(a) Be assessed by the facility regarding their need for specific types of services and supports. This assessment, and the individual negotiated service agreement, shall determine the rate charged to the resident.

(b) Receive a full description of services provided by the facility and associated costs upon admission, according to facility policies and procedures. A thirty (30) day notice must be provided prior to a change in facility billing practices or policies. Billing practices shall be transparent and understandable.

(c) Be charged for the use of furnishings, equipment, supplies and basic services as agreed upon in the negotiated service agreement or as identified in the admission agreement.

[39-3303, added 1990, ch. 116, sec. 2, p. 243; am. 1993, ch. 373, sec. 3, p. 1349; am. 1996, ch. 207, sec. 2, p. 635; am. 2000, ch. 274, sec. 11, p. 813; am. 2005, ch. 280, sec. 5, p. 884; am. 2009, ch. 214, sec. 1, p. 673.]

39-3304. TYPES OF FACILITIES. The state will foster the development of, and provide incentives for, residential care or assisted living facilities serving specific mentally ill and developmentally or physically disabled populations which are small in size to provide for family and homelike arrangements. Small facilities of eight (8) beds or less for individuals with developmental or physical disabilities or dementia and fifteen (15)

beds or less for individual with mental illness will provide residents with the opportunity for normalized and integrated living in typical homes in neighborhoods and communities.

[39-3304, added 1990, ch. 116, sec. 2, p. 244; am. 1993, ch. 373, sec. 4, p. 1350; am. 2000, ch. 274, sec. 12, p. 813; am. 2005, ch. 280, sec. 6, p. 885.]

39-3305. RULES. (1) The board shall have the authority to adopt, amend, repeal and enforce such rules as may be necessary or proper to carry out the purpose and intent of this chapter which are designed to protect the health, safety and individual rights of residents in residential care or assisted living facilities. The department shall exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any statute of this state. These rules shall be promulgated in accordance with the provisions of the Idaho administrative procedure act. The department shall, through negotiated rulemaking, promulgate rules in the following areas:

- (a) Minimum criteria for the assessment;
- (b) Minimum criteria for the negotiated service agreement;
- (c) Guidelines for the facility's physical environment and location;
- (d) Criteria for the facility's license, to include:
  - (i) Initial license application criteria and procedures;
  - (ii) License renewal criteria, procedures and timing;
  - (iii) Inspection criteria and procedures;
  - (iv) Denial and revocation of license criteria and procedures;
  - and
  - (v) Effect of previous revocation or denial of license.
- (e) Remedy and enforcement provisions for noncompliance with statute.

(2) Rules shall be drafted and promulgated following negotiation with interested providers, assisted living nurse associations and advocates.

[39-3305, added 1990, ch. 116, sec. 2, p. 244; am. 1993, ch. 373, sec. 5, p. 1350; am. 2000, ch. 274, sec. 13, p. 814; am. 2005, ch. 280, sec. 7, p. 885.]

39-3306. STATE LICENSING TO SUPERSEDE LOCAL REGULATION. This chapter and the rules promulgated pursuant to this chapter shall supersede any program of any political subdivision of the state which licenses or sets standards for residential care or assisted living facilities.

[39-3306, added 1990, ch. 116, sec. 2, p. 244; am. 1993, ch. 373, sec. 6, p. 1350; am. 2000, ch. 274, sec. 14, p. 814; am. 2005, ch. 280, sec. 8, p. 886.]

39-3307. ADMISSIONS. (1) A residential care or assisted living facility shall not admit or retain any resident requiring a level of services or type of service for which the facility is not licensed or which the facility does not provide or arrange for, or if the facility does not have the staff, appropriate in numbers and with appropriate skills, to provide. Prospective residents will also be informed of options and rights available through other programs, to include medicare benefits where applicable. The department shall provide forms for this.

(2) The department shall develop rules governing admissions to residential care or assisted living facilities.

[39-3307, added 1990, ch. 116, sec. 2, p. 244; am. 1996, ch. 207, sec. 3, p. 636; am. 2000, ch. 274, sec. 15, p. 814; am. 2005, ch. 280, sec. 9, p. 886.]

39-3308. ASSESSMENT. The department shall employ uniform assessment criteria to assess function and cognitive disability. The conclusions shall be deemed the assessment and shall be used to provide appropriate placement and funding for service needs. The assessment shall also be used to ensure funding is cost-effective and appropriate when compared to other state programs relevant to the needs of the client being assessed. The department shall develop rules regarding:

- (1) Qualifications of persons making the assessments.
- (2) Department's responsibility for state pay clients.
- (3) Time frames for completing an assessment.
- (4) Information to be included in an assessment.
- (5) Use of an assessment in developing the negotiated service agreement.
- (6) Use of assessments in determining facility staffing ratios.
- (7) Use of assessments for determining the ability of provider and facility to meet residents' needs and special training or licenses that may be required in caring for certain residents.

[39-3308, added 1996, ch. 207, sec. 5, p. 636; am. 2005, ch. 280, sec. 10, p. 886.]

39-3309. NEGOTIATED SERVICE AGREEMENT. (1) Each resident shall be provided a negotiated service agreement to provide for coordination of services and for guidance of the staff and management of the facility where the person resides. Upon completion, the agreement shall clearly identify the resident and describe the services to be provided to the resident and how such services are to be delivered. The negotiated service agreement shall be reviewed at least annually and upon any change in a diagnosis for the resident or other condition requiring substantially different additional or replacement services.

- (2) A negotiated service agreement shall be based on the person's:
  - (a) Assessment;
  - (b) Service needs for activities of daily living;
  - (c) Need for limited nursing services;
  - (d) Need for medication assistance;
  - (e) Frequency of needed services;
  - (f) Level of assistance, i.e., standby, reminding, total;
  - (g) Signature and approval of agreement; and
  - (h) Signing date that the plan was approved and date plan will be reviewed.
- (3) The administrator shall consult the resident, the resident's family, friends, case manager and/or consumer coordinator, as necessary, in the development of the resident's service agreement.
- (4) A copy of the agreement shall be given to the resident and a copy placed in the resident's records file no later than two (2) weeks from admission.
- (5) A resident shall be given the choice and control of how and what services the facility shall provide, or external vendors shall provide, to the extent the resident can make choices, so long as the resident's choice does not violate the provisions of section 39-3307(1), Idaho Code.

(6) On an exception basis, a record shall be made of any changes or inability to provide services outlined in the negotiated service agreement.

(7) The agreement shall include a statement regarding when there is no need for access to external services.

(8) There shall be documentation of refusal of certain treatments by competent resident or legal health care representative.

[39-3309, added 1996, ch. 207, sec. 7, p. 637; am. 2005, ch. 280, sec. 11, p. 886.]

39-3313. ADMISSION AGREEMENTS. (1) Upon admission to a residential care or assisted living facility, the facility and the resident shall enter into an admission agreement. The admission agreement shall clearly outline who is financially responsible for resident charges and shall clearly outline the facility's resident discharge policies. The agreement shall be in writing and shall be signed by both parties. The board shall promulgate rules governing admission agreements which may be integrated with the negotiated service agreement.

(2) A resident may be discharged for the following:

(a) A resident's failure to pay;

(b) The facility's inability to meet the resident's needs;

(c) The resident's needs are greater than the level of care provided by the specific facility;

(d) The resident is a danger to himself or others.

(3) A resident shall have the right to appeal a discharge as established by department rule.

(4) Should a residential care or assisted living facility choose not to carry professional liability insurance, that information shall be disclosed, in writing, to residents upon admission.

[39-3313, added 1990, ch. 116, sec. 2, p. 246; am. 1996, ch. 207, sec. 11, p. 638; am. 2000, ch. 274, sec. 18, p. 815; am. 2005, ch. 280, sec. 12, p. 887.]

39-3314. TERMINATION OF ADMISSION AGREEMENTS. Admission agreements may only be terminated pursuant to rules promulgated by the board.

[39-3314, added 1990, ch. 116, sec. 2, p. 246; am. 2000, ch. 274, sec. 19, p. 815.]

39-3315. ADMISSION RECORDS. (1) Records required for admission to a facility shall be maintained and updated for administrative purposes only and shall be confidential. Their availability, subject to Idaho department of health and welfare rules, chapter 1, title 5, shall be limited to administration, professional consultants, the resident's physician or authorized provider, and representatives of the licensing agency. They shall include at least the following information:

(a) Name and social security number.

(b) Permanent address if other than the facility.

(c) Marital status and sex.

(d) Birthplace and date of birth.

(e) Name, address and telephone number of responsible agent or agency.

(f) Personal physician or authorized provider.

(g) Admission date.

(h) Results of a physical or health status examination performed by a licensed physician or authorized provider within six (6) months prior to admission.

(i) A list of medications, treatments and diet prescribed for the resident which is signed and dated by the physician or authorized provider giving the order(s).

(j) Religious affiliation if resident chooses to so state.

(k) Interested relatives and friends other than those in paragraph (e) of this subsection. Names, addresses and telephone numbers of family members and/or significant others.

(l) Resident assessment.

(m) The results of any psychosocial evaluations or histories to ensure all resident needs are being met.

(2) The resident's personal or religious preferences with respect to medical treatment and medications shall be honored.

[39-3315, added 1990, ch. 116, sec. 2, p. 246; am. 1996, ch. 207, sec. 12, p. 638; am. 2000, ch. 274, sec. 20, p. 815; am. 2005, ch. 280, sec. 13, p. 888.]

39-3316. RESIDENT RIGHTS. A residential care or assisted living facility must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each facility must maintain and keep current a record of the following information on each resident:

(a) A copy of the resident's current negotiated service agreement and physician's order.

(b) Written acknowledgement that the resident has received copies of the rights.

(c) A record of all personal property and funds which the resident has entrusted to the facility, including copies of receipts for the property.

(d) Information about any specific health problems of the resident which may be useful in a medical emergency.

(e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.

(f) Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record.

(g) The current admission agreement between the resident and the facility.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

(i) The right to a diet which is consistent with any religious or health-related restrictions.

(ii) The right to refuse a restricted diet.

(iii) The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:

(i) The right to be treated in a courteous manner by staff.

(ii) The right to receive a response from the facility to any request of the resident within a reasonable time.

(iii) The right to be communicated with, orally and/or in writing, in a language they understand.

(4) Personal possessions. Each resident shall have the right to:

(a) Wear his own clothing.

(b) Determine his own dress or hair style.

(c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.

(d) Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property.

(5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.

(a) A facility shall not require a resident to deposit his personal funds with the facility.

(b) Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(6) Management of personal funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(a) The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest-bearing account or petty cash fund.

(b) The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(c) Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the department, the remaining balance of funds shall be refunded to the department.

(7) Access and visitation rights. Each facility must permit:

(a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician.

(b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.

(c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.



(d) Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(8) Employment. Each resident shall have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect, and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician, dentist and other health care professionals.

(b) The right to select the pharmacy or pharmacist of their choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(d) The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in resident and family groups. Each resident shall have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(15) Participation in other activities. Each resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(16) Examination of survey results. Each resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the department with respect to the facility and any plan of correction in effect with respect to the facility.

(17) Access by advocates and representatives. A residential care or assisted living facility shall permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to:

(a) Visit, talk with, and make personal, social and legal services available to all residents.

(b) Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals.

(c) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, which may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation.

(d) Engage in all other methods of assisting, advising and representing residents so as to extend to them the full enjoyment of their rights.

(e) Communicate privately and without restrictions with any resident who consents to the communication.

(f) Observe all common areas of the facility.

(18) Access by protection and advocacy system. A residential care or assisted living facility shall permit advocates and representatives of the protection and advocacy system designated by the governor pursuant to 42 U.S.C. section 15043 and 42 U.S.C. section 10801 et seq. access to residents, facilities and records in accordance with applicable federal statutes and regulations.

(19) Access by the long-term care ombudsman. A residential care or assisted living facility shall permit advocates and representatives of the long-term care ombudsman program pursuant to 42 U.S.C. section 3058, section 67-5009, Idaho Code, and IDAPA 15.01.03, rules of the office on aging, access to residents, facilities and records in accordance with applicable federal and state law, rules and regulations.

[39-3316, added 1990, ch. 116, sec. 2, p. 247; am. 1996, ch. 207, sec. 13, p. 639; am. 2000, ch. 274, sec. 21, p. 816; am. 2005, ch. 280, sec. 14, p. 888.]

39-3317. NOTICE OF RIGHTS. Each facility must:

(1) Inform each resident, orally and in writing at the time of admission to the facility, of his legal rights during the stay at the facility.

(2) Make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights).

(3) The written description of legal rights under this subsection shall include a description of the protection of personal funds and a statement that a resident may file a complaint with the licensing agency respecting resident abuse and neglect and misappropriation of resident property in the facility. A copy of the list of resident rights shall be conspicuously posted in the facility at all times.

[39-3317, added 1990, ch. 116, sec. 2, p. 249.]

39-3318. FACILITY RESPONSE TO INCIDENTS AND COMPLAINTS. (1) In addition to any other requirements of this chapter, the residential care or assisted living facility shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the administrator or designee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a response of action taken or a rea-

son why no action needs to be taken. In the case of anonymous complaints, the administrator or designee shall document the action taken or a reason why no action needs to be taken.

(2) In order to assure the opportunity for complaints from the residents, the neighborhood, and the community to be made directly to the administrator or designee, each facility shall, within a reasonable period of time, meet with a complainant.

[39-3318, added 1990, ch. 116, sec. 2, p. 250; am. 2000, ch. 274, sec. 22, p. 819; am. 2005, ch. 280, sec. 15, p. 892.]

39-3321. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR. Each residential care or assisted living facility must employ at least one (1) administrator licensed by the bureau of occupational licensing, which is responsible for licensing residential care facility administrators for the state of Idaho. Multiple facilities under one (1) administrator may be allowed by the department based on an approved plan of operation.

[39-3321, added 1990, ch. 116, sec. 2, p. 251; am. 1996, ch. 207, sec. 15, p. 642; am. 2000, ch. 274, sec. 25, p. 820; am. 2003, ch. 201, sec. 1, p. 529; am. 2005, ch. 280, sec. 16, p. 892.]

39-3322. QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF. (1) Each facility must employ or arrange for sufficient trained staff to fully meet the needs of its residents and the requirements of this chapter. The facility shall have sufficient staff to provide care during all hours required in each resident's negotiated service plan. Additional staff may be required if physical plant and disability of residents indicate that staff assistance in emergencies is required. Benchmarks shall be established in the assessment criteria where the need for certified nursing assistants or licensed nurses is indicated. Residential care or assisted living facilities shall not retain residents who require the care provided by nursing facilities under section 39-1301(b), Idaho Code, other than for short exceptional stays pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

(2) Should a residential care or assisted living facility choose not to carry professional liability insurance, that information shall be disclosed, in writing, to employees at the time of hiring.

[39-3322, added 1990, ch. 116, sec. 2, p. 251; am. 1996, ch. 207, sec. 16, p. 642; am. 2000, ch. 274, sec. 26, p. 820; am. 2005, ch. 280, sec. 17, p. 893.]

39-3324. STAFF TRAINING. All employees of a residential care or assisted living facility shall receive orientation and continuing education pertinent to their job responsibilities.

[39-3324, added 1990, ch. 116, sec. 2, p. 252; am. 2000, ch. 274, sec. 27, p. 821; am. 2005, ch. 280, sec. 18, p. 893.]

39-3325. REQUIREMENTS FOR LOCATION AND PHYSICAL ENVIRONMENT OF FACILITIES. Licensed residential or assisted living facilities shall:

(1) Be located in geographical areas which are accessible to supportive services and are free from conditions which would pose a danger to the residents.

(2) Be maintained in such a manner as to be free from fire and/or safety hazards.

[39-3325, added 1990, ch. 116, sec. 2, p. 252; am. 2000, ch. 274, sec. 28, p. 821; am. 2005, ch. 280, sec. 19, p. 893.]

39-3326. MEDICATIONS. The medication policy governed by the policy and procedure of the facility shall include a policy permitting, under the conditions specified, a licensed nurse to fill individual dose systems such as blister pack, mediset, or other system approved by the department. The policy shall provide for appropriate records to maintain security of medications received from a pharmacist in accordance with pharmacy standards. The licensed nurse shall appropriately label the medication with name, dosage, amount and time to be taken, and special instructions if appropriate.

[39-3326, added 2005, ch. 280, sec. 20, p. 894.]

39-3330. ADVISORY COUNCIL. The department shall establish a state level advisory council consisting of twenty (20) members appointed by the organizations and/or agencies represented on the council. The chairman of the council shall be elected from the membership. The members of the council shall be determined by the bylaws of the council.

[39-3330, added 1990, ch. 116, sec. 2, p. 252; am. 1992, ch. 66, sec. 1, p. 200; am. 1993, ch. 373, sec. 7, p. 1350; am. 2000, ch. 274, sec. 29, p. 821; am. 2005, ch. 280, sec. 21, p. 894; am. 2011, ch. 123, sec. 1, p. 346.]

39-3331. POWERS AND DUTIES OF THE ADVISORY COUNCIL. The residential care or assisted living advisory council shall have the following powers and duties:

(1) To make policy recommendations regarding the coordination of licensing and enforcement standards in residential care or assisted living facilities and the provision of services to residents of residential care or assisted living facilities.

(2) To advise the agency during development and revision of rules.

(3) To review and comment upon any proposed rules pertaining to residential care or assisted living.

(4) To submit an annual report to the legislature stating opinions and recommendations which would further the state's capability in addressing residential care or assisted living facility issues.

[39-3331, added 1990, ch. 116, sec. 2, p. 253; am. 1992, ch. 66, sec. 2, p. 201; am. 2000, ch. 274, sec. 30, p. 822; am. 2005, ch. 280, sec. 22, p. 895; am. 2011, ch. 123, sec. 2, p. 347.]

39-3332. MEETINGS. The residential care or assisted living advisory council shall meet as necessary but not less than four (4) times a year. Meetings of the council shall be open to the public. The department shall provide:

(1) Staff necessary to assist the council in performing its duties.

(2) Space for meetings of the council.

(3) Accommodations for alternative meeting formats.

[39-3332, added 1990, ch. 116, sec. 2, p. 253; am. 2005, ch. 280, sec. 23, p. 895; am. 2011, ch. 123, sec. 3, p. 347.]

39-3333. REIMBURSEMENT OF EXPENSES. Members of the residential care and assisted living advisory council shall be reimbursed by the department

for their actual expenses incurred in the performance of their duties, not to exceed the limits set forth in the state travel guidelines.

[39-3333, added 1990, ch. 116, sec. 2, p. 253; am. 2005, ch. 280, sec. 24, p. 895.]

39-3340. LICENSING. (1) Any person, firm, partnership, association, governmental unit, or corporation within the state proposing to operate, establish, manage, conduct, or maintain a residential care or assisted living facility in the state shall have a license issued by the licensing agency of the department. A license is not transferable. The owner of the license has ultimate responsibility for the operation of the facility.

(2) Each residential care or assisted living facility in the state requires an administrator, properly licensed by the bureau of occupational licensing, who is responsible for the day-to-day operation of the facility.

(3) A license is not transferable from one (1) individual to another, from one (1) business entity to another, or from one (1) location to another. When a change of operator, ownership or location occurs, the facility shall be relicensed, and the operator shall follow the application procedures and obtain a license before commencing operation as a facility. When there is a significant change in an owner's share of the facility that does not alter the overall ownership or operation of the business, that change shall be communicated to the licensing agency within sixty (60) days of the effective date of the change. When the owner contracts the operation to a facility management company, other than for temporary management, it shall be treated as a change of operator.

[39-3340, added 1990, ch. 116, sec. 2, p. 253; am. 1993, ch. 373, sec. 8, p. 1351; am. 2000, ch. 274, sec. 31, p. 822; am. 2005, ch. 280, sec. 25, p. 896; am. 2015, ch. 46, sec. 1, p. 98.]

39-3345. DENIAL OR REVOCATION OF A LICENSE. The licensing agency may deny the issuance of a license or revoke any license when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of residents, or when the facility is not in substantial compliance with the provisions of this chapter or the rules promulgated pursuant to this chapter.

[39-3345, added 1990, ch. 116, sec. 2, p. 255; am. 2000, ch. 274, sec. 34, p. 824; am. 2005, ch. 280, sec. 26, p. 896.]

39-3349. RESPONSIBILITY FOR INSPECTIONS AND TECHNICAL ASSISTANCE. The licensing agency shall inspect and provide technical assistance to residential care or assisted living facilities. The department may provide consulting services upon request to any residential care or assisted living facility to assist in the identification or correction of deficiencies and in the upgrading of the quality of care provided by the facility.

[39-3349, added 1990, ch. 116, sec. 2, p. 256; am. 2000, ch. 274, sec. 36, p. 824; am. 2005, ch. 280, sec. 27, p. 896.]

39-3351. EXEMPTIONS. The provisions of this chapter do not apply to any of the following:

(1) Any health facility as defined by chapter 13, title 39, Idaho Code.

(2) Any house, institution, hotel, congregate housing project, retirement home or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recre-

ational and social activities; or that has residents accessing supportive services from an entity approved to provide such services in Idaho and holding no legal ownership interest in the entity operating the facility.

(3) Any arrangement for the receiving and care of persons by a relative.

(4) Any similar facility determined by the director.

[39-3351, added 1990, ch. 116, sec. 2, p. 256; am. 1996, ch. 207, sec. 18, p. 643; am. 2005, ch. 280, sec. 28, p. 897.]

39-3352. UNLICENSED RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES. (1) No unlicensed residential care or assisted living facility shall operate in this state.

(2) A facility shall be deemed to be an "unlicensed residential care or assisted living facility" and "maintained and operated to provide services" if it is unlicensed and not exempt from licensure, and any one (1) of the following conditions is satisfied:

(a) The facility is, or is held out as or represented as, providing care, supervision and services.

(b) The facility accepts or retains residents who demonstrate the need for care, supervision, and services, as defined in this chapter or the rules adopted pursuant to this chapter.

(3) Upon discovery of an unlicensed residential care or assisted living facility, the department shall refer residents to the appropriate placement or adult protective services agency if either of the following conditions exist:

(a) There is an immediate threat to the resident's health and safety.

(b) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

(4) A person found to be operating a residential care or assisted living facility without a license shall be guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars (\$5,000).

(5) In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the attorney general is authorized to prosecute violations under the provisions of this section.

[39-3352, added 1990, ch. 116, sec. 2, p. 256; am. 1993, ch. 373, sec. 10, p. 1352; am. 2000, ch. 274, sec. 38, p. 824; am. 2005, ch. 280, sec. 29, p. 897.]

39-3354. WAIVER OR VARIANCE. The board shall provide by rule a procedure whereby a temporary variance or a permanent waiver of a specific standard may be granted in the event that good cause is shown for such a variance or waiver and providing that a variance or waiver of a standard does not endanger the health and safety of any resident. The decision to grant a variance or waiver shall not be considered as precedent or be given any force or effect in any other proceeding.

[39-3354, added 1990, ch. 116, sec. 2, p. 257; am. 2005, ch. 280, sec. 30, p. 898.]

39-3354A. SPECIAL WAIVER PERMITTED. The department may grant a special waiver of the requirement for licensure as a residential care or assisted living facility when it is deemed in the best interests of individuals and with due consideration of the following criteria:

(1) The individuals are residents of a facility operated by a nonprofit health care and/or housing organization established as such in the state of Idaho and satisfying the requirements of U.S. Internal Revenue Code section 501(c) as a nonprofit;

(2) The support services required by the individuals are furnished by an entity approved to provide such services in the state of Idaho in good standing as demonstrated by routine inspections required for the type of entity providing services;

(3) Facilities seeking such waivers and providing meal service shall be inspected and licensed as a food service establishment by the district health department unless the meal service is provided by a kitchen already part of a facility licensed by the department;

(4) The costs of obtaining the needed services from another source are significantly greater and/or would pose a significant hardship on these individuals.

Any waiver granted under this section shall be reviewed annually and is subject to inspection by the department to ensure safety and sanitation.

[39-3354A, added 1998, ch. 188, sec. 1, p. 683; am. 2000, ch. 274, sec. 40, p. 825; am. 2005, ch. 280, sec. 31, p. 898.]

39-3355. INSPECTIONS. (1) The licensing agency shall cause to be made such inspections and investigations to determine compliance with this chapter and applicable rules.

(2) Inspections for such purposes will be made unannounced and without prior notice at the discretion of the department and at intervals determined by the licensing agency.

(3) An inspector shall have full access and authority to examine, among other things, quality of care and service delivery, a facility's records, resident accounts, physical premises, including buildings, grounds and equipment, and any other areas necessary to determine compliance with this chapter and applicable rules.

(4) An inspector shall have authority to interview the licensee, administrator, staff and residents. Interviews with residents shall be confidential and conducted privately unless otherwise specified by the resident.

(5) The licensing agency shall notify the facility, in writing, of all deficiencies and shall approve a reasonable length of time for compliance by the facility.

(6) Current lists of deficiencies, including plans of correction, shall be available to the public upon request in the individual facilities or by written request to the department.

[39-3355, added 1990, ch. 116, sec. 2, p. 257; am. 1996, ch. 207, sec. 20, p. 643; am. 2000, ch. 274, sec. 41, p. 826; am. 2005, ch. 280, sec. 32, p. 898.]

39-3356. COMPLAINTS. (1) A person who believes that any provision of this chapter has been violated may file a complaint with the licensing agency.

(2) The licensing agency shall investigate, or cause to be investigated, any complaint alleging a violation of this chapter or applicable rules, regulations and standards. If the licensing agency reasonably believes a requirement of this chapter has been violated, it shall conduct an inspection of the facility.

(3) A complaint filed with the licensing agency which is subsequently released to the facility that is the subject of the complaint or to any member of the public shall not disclose the name or identifying characteristics of the complainant unless:

(a) The complainant consents in writing to the disclosure.

(b) The investigation results in a judicial proceeding and disclosure is ordered by the court.

(c) If the disclosure is essential to the investigation, the complainant shall be given an opportunity to withdraw the complaint before disclosure.

(4) The licensing agency shall inform the complainant or, if requested by the complainant, the complainant's designated representative, of the results of the investigation and any action taken by the agency.

[39-3356, added 1990, ch. 116, sec. 2, p. 257.]

39-3357. ENFORCEMENT PROCESS. (1) If the licensing agency finds, on the basis of inspections as defined in this chapter or otherwise, that a residential or assisted living facility no longer meets a requirement of this chapter, and further finds that the facility's deficiencies:

(a) Immediately jeopardize the health or safety of its residents, the department shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in section 39-3358(1)(c), Idaho Code, or prohibit the facility from keeping or admitting residents and may provide, in addition, for one (1) or more of the other remedies described in section 39-3358, Idaho Code.

(b) Do not immediately jeopardize the health or safety of its residents, the department shall provide for one (1) or more of the remedies described in section 39-3358, Idaho Code.

(2) Nothing in this section shall be construed as restricting the remedies available to the department to remedy a facility's deficiencies. If the department finds that a facility meets the requirements of this chapter, but, as of a previous period, intentionally did not meet such requirements, the department may provide for a civil money penalty under section 39-3358(1)(b), Idaho Code, for the days in which it finds that the facility was not in compliance with such requirements.

(3) Residential care or assisted living facilities may be cited only for a violation of a requirement that is specified in an applicable law or in a rule promulgated in compliance with an applicable law. Facilities may not be cited for an act that is not expressly proscribed by an applicable law or rule or for an omission when an applicable law or rule does not expressly require the conduct omitted. If the department requires a specific corrective action in relation to a citation, that requirement must be in writing and reference the corresponding rule.

[39-3357, added 1990, ch. 116, sec. 2, p. 258; am. 2000, ch. 274, sec. 42, p. 826; am. 2016, ch. 210, sec. 1, p. 593.]

39-3358. SPECIFIED REMEDIES. (1) The department shall establish at least the following remedies:

(a) Prohibit the facility from admitting residents or prohibit a facility from keeping or admitting residents with a specific diagnosis.

(b) A civil money penalty assessed and collected, with interest, for each day the facility is or was out of compliance with a requirement of this chapter. Funds collected by the department as a result of imposi-



tion of such a penalty shall be applied to the protection of the health or property of residents of residential or assisted living facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(c) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while:

(i) There is an orderly closure of the facility.

(ii) Improvements are made in order to bring the facility into compliance with all the requirements of this chapter.

(iii) The temporary management under this clause shall not be terminated until the department has determined that the facility has the management capability to ensure continued compliance with all the requirements of this chapter.

(d) The authority, in the case of an emergency, to summarily suspend the license, to close the facility, and/or to transfer residents in that facility to other facilities.

(2) The department shall also specify criteria as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

[39-3358, added 1990, ch. 116, sec. 2, p. 258; am. 2000, ch. 274, sec. 43, p. 827.]