



**CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR AGING AND INDEPENDENT LIVING**

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Vickie Yates Brown Glisson
Secretary

MEMORANDUM OF UNDERSTANDING

TO: Certified Assisted Living Communities

FROM: Judge Timothy Feeley, Deputy Secretary *T.F.*

DATE: September 15, 2017

RE: Clarification Regarding Assistance with Transferring and Danger

On June 26, 2017, DAIL released an email to all Kentucky assisted living communities summarizing DAIL's participation at the KALFA Conference held on June 6-8, 2017. This email discussed DAIL's position regarding assistance with transferring and circumstances when DAIL would issue a statement of danger. DAIL wrote, "The rule of thumb for a resident who is unable to transfer themselves from bed to chair is that they are a danger and cannot independently exit the building without jeopardizing the safety of other residents due to their need for one-on-one heightened care." We would like to clarify what DAIL meant by this statement.

194A.700 Definitions for KRS 194A.700 to 194A.729. (2) states, "Assistance with activities of daily living and instrumental activities of daily living" means any assistance provided by the assisted-living community staff with the client having at least minimal ability to verbally direct or physically participate in the activity with which assistance is being provided." Definition (6) states, "Danger" means physical harm or threat of physical harm to one's self or others" and (13) states, "Statement of Danger" means a written response issued by the department detailing an instance where a client is a danger." DAIL's position is that a client in an assisted living can receive "assistance" with all activities of daily living and instrumental activities of daily living with client participation. This does not mean staff are physically performing one hundred percent (100%) of the task for the client. Staff should not be using a gait belt to complete a transfer or utilize a gait belt with a client during ambulation for stabilization. A gait belt is a "medical device" and this device is used primarily by medically trained professionals and is typically used in the performance of a medical service (i.e. physical therapy or occupational therapy). A client can easily sustain an injury if a gait belt is not used appropriately by trained professionals, not to mention injury to staff from improper use.

You must continually assess the level of assistance the clients in your community require and if you have enough staff to provide the assistance while also ensuring the safety of the remaining clients.

In addition, KRS 194A.711 Criteria to be met by clients, clearly states, "A client shall meet the following criteria: (1) Be ambulatory or mobile non-ambulatory, unless due to a temporary condition; and (2) Not be a danger." 910 KAR 1:240 Section 1 (2) defines "Ambulation" as the ability to walk without assistance and (11) defines "mobile nonambulatory" as unable to walk without assistance, but able to move from place to place with the use of a device including but not limited to a walker, crutches, or wheelchair." 910 KAR 1:240 Section 1(17) defines "temporary condition" as a condition that affects a client as follows: (a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or (b) 1. The client loses mobility after entering a lease agreement; 2. The client is not expected to regain mobility; 3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and 4. The assisted-living community has a written plan in place to ensure that the client is not a danger. KRS 216.300(1) defines "Licensed healthcare professional" as a physician and surgeon, podiatrist, osteopath, osteopathic physician or surgeon; physician assistant, nurse, dentist, or pharmacist.

KRS 194A.700 (1) defines "Activities of Daily Living" as normal daily activities, including bathing, dressing, grooming, transferring, toileting and eating. By definition, "ambulation" is not an activity of daily living. Being ambulatory or mobile non-ambulatory is a stand-alone requirement that must be met to be eligible to reside in an assisted living community. When a client is no longer ambulatory or mobile non-ambulatory and the condition is not temporary (i.e, the temporary condition has not resolved within six (6) months), the client no longer meets criteria to reside in an assisted living community. The only exception to this requirement is if the client is receiving services from Hospice. However, in both situations (temporary condition or Hospice), there must be written documentation from a health care professional that the client is under a temporary condition or Hospice, and this documentation must be kept in the client file. There must also be a written plan in the client file that outlines how the client (and others) will not be a danger and the plan must address how the client will be evacuated from the assisted living in event of an emergency. If a client is not under a temporary condition or Hospice, at no time can the client utilize a private caregiver to "make them eligible" or help them meet the eligibility criteria for assisted living.

We hope this information has clarified DAIL's position regarding transferring and danger. If you have any concerns that need to be discussed further, please feel free to contact Deputy Commissioner Lala Williams at lala.williams@ky.gov.