



**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: October 12, 2017

RE: DAIL's Official Responses to KALFA Regarding Resident Safety and Risk

KALFA - 1. *We felt that the activity of daily living, transferring as being a danger was addressed indirectly, and should be addressed directly, i.e. "Transferring is an activity of daily living and is allowed by regulation in an Assisted Living Community and is not a danger."*

DAIL - 1. Transferring is defined in KRS 194A.700(1) as an activity of daily living and KRS 194A.700(2) defines "assistance with activities of daily living and instrumental activities of daily living". However, the operative word is "assistance with" and the degree of assistance provided. Completely lifting a client is not "assistance with" and performing a complete lift can present a danger to both the client and employee. The difference between assisting with a task, and performing said task *for* the client, is what is at issue. The assistance provided *must be supplemental* support for the client. Transferring a client *can* be a danger and will be observed on an individual basis as such by DAIL. Additionally, the following must be answered: "Is there *adequate staff* in the assisted living community to assist clients with transferring, as well as, *expeditiously and safely evacuating the building in event of an emergency, on a 24 hour basis?*" If not, then this presents a danger. For example- If three (3) clients require 100% assistance with transfers and there is one (1) staff person on duty, this would be considered a danger, especially in event of an emergency. In addition, if you have a resident that needs a two (2) person assist, and only have one (1) staff person on duty, then this would present a danger to both the client and the employee.

KALFA - 2. *None of the ADLs (including transferring) have ever had a measure re: the extent in which we can assist the resident so long as the resident can "verbally direct OR physically participate." So if we have to lift someone 100%, as long as the resident is verbally directing the staff person – then this is permissible per the statute. The operative*

word in this particular statute is "OR" and we (KALFA) remember working on that wording specifically for that reason.

DAIL- 2. As stated above, completely lifting someone is not providing assistance. The difference between assisting with a task and performing the task *for* the client is the operative issue. The assistance provided *must be supplemental* support for the client. In addition, if an assisted living does not have adequate staff available to assist ALL residents requiring transfer assistance, then this presents a danger, especially in the event of an emergency.

KALFA - 3. *Some of our members do NOT see a gait belt as a "medical device" that is only used by medical professionals. These are used by non-clinical people all the time. In home health, the physical therapists leave them in patient's homes all the time for families to use when assisting the patient at home. We see this as the same in assisted living. It is simply a safety measure where staff or family can be trained to use the gait belts in order to keep the resident safe, especially due to weakness or a change in gait or a recuperation from a fall during transfers or ambulating. In many instances, using a gait belt is much safer for the resident and the staff member than nothing at all.*

DAIL – 3. Ambulation is **not** an activity of daily living (ADL) per the definition of Activities of Daily Living and Instrumental Activities of Daily Living cited in KRS194A.700(1). To qualify for residency in an assisted living, KRS 194A.711 Criteria to be met by client's 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) states, "Ambulatory" means the ability to walk without assistance. KRS 194A.700(11) states, "Mobile non-ambulatory" means 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." This means a person can be **independently** mobile utilizing a device such as a walker, crutches, or wheelchair. A resident cannot use a gait belt independently and should not have staff, family, sitter, etc., use a gait belt during ambulation.

KALFA - 4. *On the 2nd page of the memorandum, it seems to reference the statute correctly, but it seems that they only reference Hospice in their explanation. The statute states "or similar end-of-life services." We think they need to make that consistent in their explanation because a resident could be receiving palliative care through a private service or under the supervision of a physician and this should qualify as well under the temporary condition requirements.*

DAIL – 4. DAIL does not disagree that end of life services can be provided by services other than Hospice. However, 910 KAR 1:240 Section 1(17)(b)3. states, "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 the assisted-living community has a written plan in place to ensure that the client is not a danger." KRS 216.300(1) states: "Licensed healthcare professional" means a physician and surgeon, podiatrist, osteopath, osteopathic physician or surgeon; physician assistant, nurse, dentist, or pharmacist. A written plan must also be in place documenting how a client is not a danger during the period of time that they are under a temporary condition. 910

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KAR 1:240 Section 1(17) states, "Temporary condition" means 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 non-ambulation; 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."

We hope this information has clarified DAIL's position regarding resident safety and risk in an assisted living community. If you have any concerns that need to be discussed further, please contact Deputy Commissioner Lala Williams at lala.williams@ky.gov.