



Brian P. Kemp, Governor

Frank W. Berry, Commissioner

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PUBLIC NOTICE OF PROPOSED RULE CHANGES

Pursuant to the Georgia Administrative Procedures Act, Official Code of Georgia (O.C.G.A.) § 50-13-1, et seq., the Georgia Department of Community Health is required to provide public notice of its intent to adopt, amend, or repeal certain rules other than interpretative rules or general statements of policy. Accordingly, the Department hereby provides notice of its intent to revise the **Rules and Regulations for Personal Care Homes, Ga. Comp. Rules & Regs., R. 111-8-62**. These rules are being proposed pursuant to the authority granted to the Department in O.C.G.A. §§ 31-2-5 and 31-2-7. An exact copy of the revised rules and a synopsis of the revisions are attached to this public notice.

NOTICE OF PUBLIC HEARING

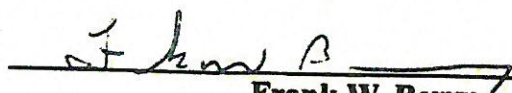
An opportunity for public comment will be held on January 14, 2020 at 10:00 a.m. at the Department of Community Health (2 Peachtree St., N.W., Atlanta, GA 30303) in the 5th Floor Board Room. Oral comments may be limited to ten (10) minutes per person. Individuals who are disabled and require assistance to participate during this meeting should contact the Office of General Counsel at (404) 656-7993 at least three (3) business days prior to the meeting.

Individuals wishing to comment in writing on the new rules should do so on or before January 17, 2020. Comments may be faxed to (404) 656-0663, emailed to vharrell@dch.ga.gov, or mailed to the following address:

Attention: Office of General Counsel
Georgia Department of Community Health
2 Peachtree Street, NW, 40th Floor
Atlanta, GA 30303

Comments from written and public testimony will be provided to the Board of Community Health prior to February 13, 2020. The Board will vote on the proposed changes on February 13, 2020.

NOTICE IS HEREBY GIVEN THIS 12th DAY OF December, 2019


Frank W. Berry

**RULES OF
GEORGIA DEPARTMENT OF COMMUNITY HEALTH
HEALTHCARE FACILITY REGULATION DIVISION**

**CHAPTER 111-8-62
RULES AND REGULATIONS FOR PERSONAL CARE HOMES**

SYNOPSIS OF REVISED RULES

STATEMENT OF PURPOSE: The Georgia Department of Community Health proposes to revise the Rules and Regulations for Personal Care Homes, Chapter 111-8-62. These rules are being proposed pursuant to the authority granted the Department of Community Health in O.C.G.A. § 31-2-5 and O.C.G.A. § 31-2-7.

MAIN FEATURE OF THE REVISED RULE: Revision of the rules to remove criminal background check requirements which are now found in Chapter 111-8-12 and to add a requirement that homes post inspection reports online.

**RULES OF
DEPARTMENT OF COMMUNITY HEALTH**

**CHAPTER 111-8
HEALTHCARE FACILITY REGULATION**

**111-8-62
RULES AND REGULATIONS FOR PERSONAL CARE HOMES**

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Rule 111-8-62-.03 Definitions

In these rules, unless the context otherwise requires, the words, phrases and symbols shall mean the following:

- (a) "Abuse" means any intentional or grossly negligent act or series of acts or intentional or grossly negligent omission to act which causes injury to a resident, including but not limited to, assault or battery, failure to provide treatment or care, or sexual harassment of the resident.
- (b) "Activities of daily living" means bathing, shaving, brushing teeth, combing hair, toileting, dressing, eating, laundering, cleaning private living space, managing money, writing letters, shopping, using public transportation, making telephone calls, grooming, obtaining appointments, engaging in leisure and recreational activities, or other similar activities.
- (c) "Administrator" means the manager designated by the governing body as responsible for the day-to-day management, administration and supervision of the personal care home, who may also serve as the on-site manager and responsible staff person except during periods of his or her own absence.
- (d) "Ambulatory Resident" means a resident who has the ability to move from place to place by walking, either unaided or aided by prosthesis, brace, cane, crutches, walker or hand rails, or by propelling a wheelchair or scooter; who can respond to an emergency condition, whether caused by fire or otherwise, and escape with minimal human assistance such as guiding a resident to an exit, using the normal means of egress.
- (e) "Applicant" means any of the following:
 - 1. When the personal care home is owned by a sole proprietorship, the individual proprietor shall be the applicant for the license, complete the statement of responsibility and serve as the licensee.
 - 2. When the personal care home is owned by a partnership, the general partners shall be the applicant for the license, complete the statement of responsibility and serve as the licensee.
 - 3. When the personal care home is owned by an association or limited liability company (LLC), the governing body of the association or LLC shall authorize the application for

the license and complete the statement of responsibility and the association shall serve as the licensee.

4. When the personal care home is owned by a corporation, the governing body of the corporation shall authorize the application for the license and complete the statement of responsibility and the corporation shall serve as the licensee.
- (f) "Assisted living care" means the specialized care and services provided by an assisted living community which includes the provision of personal services, the administration of medications by a certified medication aide and the provision of assisted self preservation.
- (g) "Chemical Restraint" means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms.
- ~~(h) "Criminal history background check" means a search as required by law of the criminal records maintained by law enforcement authorities to determine whether the applicant or prospective employee or employee has a criminal record as defined in these rules and applicable laws.~~
- ~~(i) "Criminal record" means:~~
- ~~1. Conviction of a crime; or~~
 - ~~2. Arrest, charge, and sentencing for a crime where:~~
 - ~~(i) a plea of nolo contendere was entered to the charge; or~~
 - ~~(ii) first offender treatment without adjudication of guilt pursuant to the charge was granted; or~~
 - ~~(iii) adjudication or sentence was otherwise withheld or not entered on the charge; or~~
 - ~~(iv) arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to O.C.G.A. § 17-3-1et seq.~~

- (h) "Department" means the Georgia Department of Community Health operating through the Division of Healthcare Facility Regulation.
- (ik) "Disabled individual" means an individual that has a physical or mental impairment that substantially limits one or more major life activities and who meets the criteria for a disability under state or federal law.
- (il) "Employee" means any person, other than a director, utilized by a personal care home to provide personal services to any resident on behalf of the personal care home or to perform at any facilities of the personal care home any duties which involve personal contact between that person and any paying resident of the personal care home.
- (km) "Exploitation" means an unjust or improper use of another person or the person's property through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one's own personal advantage.
- ~~(n) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the Department based upon a records check comparison of Georgia Crime Information Center (GCIC) information with fingerprints and other information in a records check application.~~
- (le) "Governing Body" means the person or group of persons as defined in Georgia law who maintain and control the home and who are legally responsible for the operation of the home.
- (me) "Health services" means the specialized assistance that may be provided by or at the direction of either licensed healthcare professionals, such as doctors, nurses, physical therapists or through licensed healthcare programs, such as home health agencies, hospices and private home care providers to address health needs that the home is not authorized by law or regulations to provide.
- (ne) "Injury" as used in the definition of abuse means a wrong or harm caused by an individual to a resident which is manifested by a physical or behavioral reaction or change in the appearance or actions of the resident, such as, but not limited to, reddened or bruised skin not related to routine care, crying, startling or cowering reaction by the resident and malnutrition or pressure

ulcers, such as skin breakdowns, for which the home has not provided proper care.

~~(r) "Law enforcement agency" means the Georgia Bureau of Investigation or a local law enforcement agency or a contractor approved by law enforcement authorities with authorization to conduct criminal history background checks through the Georgia Crime Information Center (GCIC).~~

(os) "Legal Surrogate" means a duly appointed person who is authorized to act, within the scope of the authority granted under the legal surrogate's appointment, on behalf of a resident who is adjudicated or certified incapacitated. The legal surrogate may act on a resident's behalf where a resident has not been adjudicated as incapacitated provided that the action is consistent with the resident's wishes and intent and is within the scope of the authority granted. Where such authority is exercised pursuant to a Power of Attorney executed by a resident, the facility must maintain a copy of this document in the resident's files. The resident's duly appointed legal surrogate(s) shall have the authority to act on the resident's behalf as established by written applicable federal and state of Georgia law, and shall be entitled to receive information relevant to the exercise of his or her authority. No member of the governing body, administration, or staff of the personal care home or affiliated personal care homes or their family members may serve as the legal surrogate for a resident.

~~(t) "Licensed Residential Care Profile" means the form made available by the Department which the personal care home must use to inform the public about the services it provides.~~

(pu) "Medical services" means services which may be provided by a person licensed pursuant to Article II of Chapter 34 of Title 43 of the Official Code of Georgia Annotated. or appropriately licensed and supervised nurse practitioners and physicians assistants.

(qv) "Memory care services" means the additional watchful oversight systems, program, activities and devices that are required for residents who have cognitive deficits which may impact memory, language, thinking, reasoning, or impulse control, and which place the residents at risk of eloping, i.e., engaging in unsafe wandering activities outside the home.

- (~~rw~~) "Memory care unit" means the specialized unit or home that either holds itself out as providing memory care services or provides personal services in secured surroundings.
- (~~sx~~) "Non-Family Adult" means a resident 18 years of age or older who is not related by blood within the third degree of consanguinity or by marriage to the person responsible for the management of the personal care home or to a member of the governing body.
- (~~ty~~) "Nursing services" means those services which may be rendered by a person licensed pursuant to Articles 1 and 2 of Chapter 26 of Title 43 of the Official Code of Georgia Annotated.
- (~~uz~~) "On-site manager" means the administrator or person designated by the administrator as responsible for carrying on the day-to-day management, supervision, and operation of the personal care home, who may also serve as the responsible staff person except during periods of his or her own absence.
- (~~vaa~~) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in the facility providing care to persons under the license of the facility in this state and who:
1. purports to or exercises authority of the owner in a facility; ~~of~~
 2. applies to operate or operates a facility; ~~of~~
 3. maintains an office on the premises of a facility; ~~of~~
 4. resides at a facility; ~~of~~
 5. has direct access to persons receiving care at a facility; ~~of~~
 6. provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or
 7. enters into a contract to acquire ownership of a facility.
- (~~wbb~~) "Permit" or "Regular Permit" means the authorization granted by the Department to the governing body to operate a Personal Care Home.

- (~~xee~~) "Personal Care Home", "home" or "facility" means any dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage.
- (~~yed~~) "Personal Services" includes, but is not limited to, individual assistance with or supervision of self-administered medication, assistance with ambulation and transfer, and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting.
- (~~zee~~) "Proxy caregiver" means an unlicensed person or a licensed health care facility that has been selected by a disabled individual or a person legally authorized to act on behalf of such individual to serve as such individual's proxy caregiver and meets the requirements contained in the Rules and Regulations for Proxy Caregivers Used in Licensed Healthcare Facilities, Chapter 111-8-100.
- (~~aaff~~) "Physical Restraints" are any manual or physical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom or normal access to one's body. Physical restraints include, but are not limited to, leg restraints, arm restraints, hand mitts, soft ties or vests, and wheelchair safety bars. Also included as restraints are practices employed by the home which function as a restraint, such as tucking in a sheet so tightly that a bedbound resident cannot move, bedrails, or chairs that prevent rising, or placing a wheelchair-bound resident so close to a wall that the wall prevents the resident from rising. Wrist bands or devices on clothing that trigger electronic alarms to warn staff that a resident is leaving a room do not, in and of themselves, restrict freedom of movement and should not be considered as restraints.
- (~~bbgg~~) "Plan of Correction" means the written plan prepared in response to cited rule violations which identify by date certain the specific actions that will be taken by the personal care home to come into compliance with applicable rules.
- (~~cchh~~) "Representative" means a person who voluntarily, with the resident's written authorization, may act upon resident's direction with regard to matters concerning the health and welfare of the resident, including being able to access personal records contained in the resident's file and receive

information and notices pertaining to the resident's overall care and condition. This written authorization may take the form of an advance directive.

(~~ddi~~) "Resident" means any non-family adult receiving or requiring personal assistance and residing in a personal care home.

(~~eei~~) "Responsible Staff Person" means the employee designated by the administrator or on-site manager as responsible for supervising the operation of the home during periods of temporary absence of the administrator or on-site manager.

~~(kk) "Satisfactory records check determination" means a written determination that a person for whom a records check was performed was found to have no criminal record as defined in O.C.G.A. § 31-7-250 or O.C.G.A. § 31-2-9, as applicable.~~

(~~ffh~~) "Self-administration of medications" or "self-administered medications" means those prescription or over-the-counter drugs that the resident personally chooses to ingest or apply where the resident has been assessed and determined to have the cognitive skills necessary to articulate the need for the medications and generally knows the times the medications are to be taken, and physical characteristics of medications to be taken.

(~~ggmm~~) "Self-preservation" means the ability to respond to an emergency condition, whether caused by fire or otherwise, and escape the emergency without physical, hands-on assistance from staff. The resident may move from place to place by walking, either unaided or aided by prosthesis, brace, cane, crutches, walker or hand rails, or by propelling a wheelchair or scooter.

~~(nn) "Unsatisfactory criminal history background check determination" means a written determination that a person for whom a records check was performed has a criminal record which indicates an arrest, charge or conviction of one of the covered crimes outlined in O.C.G.A. § 31-7-250 et seq., if applicable, or as outlined in O.C.G.A. § 31-2-9, if applicable.~~

Authority: O.C.G.A. §§ 31-2-7, 31-2-8, 31-2-9, 31-7-2.1, 31-7-3, 31-7-12, 31-7-12.2, 31-7-12.3 and 31-8-80 et seq.

Rule 111-8-62-.09 Workforce Qualifications and Training

- (1) **Age Requirements.** The on-site manager and all other direct-care supervisory staff working in a personal care home must be at least 21 years of age. Non-supervisory staff providing hands-on care to the residents must be at least 18 years of age.
- (2) The administrator or on-site manager must be responsible for ensuring that any person working in the home as an employee, under contract or otherwise, receives work-related training within the first sixty days of employment. Such training must include, at a minimum, the following:
 - (a) Evidence of current certification in emergency first aid except where the staff person is a currently licensed health care professional;~~z~~
 - (b) Evidence of current certification in cardiopulmonary resuscitation where the training course required return demonstration of competency;~~z~~
 - (c) Emergency evacuation procedures;~~z~~
 - (d) Medical and social needs and characteristics of the resident population;~~z~~
 - (e) Residents' rights;~~z~~
 - (f) Identification of conduct constituting abuse, neglect or exploitation of a resident and reporting requirements to include the employee's receipt of a copy of the Long-Term Care Facility Resident Abuse Reporting Act as outlined in O.C.G.A. § 31-8-81 et seq.; and
 - (g) General infection control principles including the importance of hand hygiene in all settings and attendance policies when ill.
- (3) At least one staff person having completed the minimum training requirements of Rule 111-8-62-.09(2)(a) through (g~~f~~) above must be present in the home at all times resident(s) are present in the home. Where the home provides a secure unit, the unit itself must have at least one person present in the unit who has completed all the required training.
- (4) All persons, including the administrator or on-site manager, who offer direct care to the residents, must satisfactorily complete continuing education each year, in courses, relevant to their job

duties, including, but not limited to, appropriate medication assistance, working with the elderly, working with residents with Alzheimer's or other cognitive impairments, working with the mentally retarded, mentally ill and developmentally disabled, social and recreational activities, legal issues, physical maintenance and fire safety, housekeeping, or other topics as needed or as determined by the Department.

- (5) All directors and employees involved with the provision of personal services to the residents must have at least sixteen (16) hours of training per year.
- (6) The administrator, on-site manager, and each employee must have received a tuberculosis screening and a physical examination by a licensed physician, nurse practitioner or physician assistant within twelve months prior to their employment with the home which examination was sufficiently comprehensive to assure that the employee is free of diseases communicable within the scope of employment and physically qualified to work. Follow-up examinations must be conducted by a licensed physician, nurse practitioner or physician assistant of each administrator or staff person to determine readiness to return to work following a significant illness or injury. Copies of information regarding staff member health must be kept in the staff person's file accessible at the licensed home or within one hour of the request.
- (7) **Criminal History Background Checks for Owners Required.** Prior to the issuance of any new license, the owner of the business or agency applying for the license must comply with the requirements of the Rules and Regulations for Criminal Background Checks, Chapter 111-8-12~~submit a fingerprint records check application so as to permit the Department to obtain a criminal history background check.~~
 - ~~(a) In lieu of a records check application, the owner may submit evidence, satisfactory to the Department, that within the immediately preceding 12 months the owner has received a satisfactory criminal history background check determination.~~
 - ~~(b) A personal care home license must not be issued, and any license issued must be revoked where it has been determined that the owner has a criminal record as defined in O.C.G.A. § 31-2-9 or specific rules passed pursuant to the statute.~~

- ~~(c) An owner with a valid personal care home license who acquires a criminal record for any of the crimes as defined in O.C.G.A. § 31-2-9 or rules passed pursuant to the statute subsequent to the effective date of these rules must disclose the criminal record to the Department.~~
- ~~(d) If at any time the Department has reason to believe an owner holding a license has a criminal record where mitigation has not been determined as described in O.C.G.A. § 31-2-9 or rules passed pursuant to the statute, the Department shall initiate a revocation action.~~

(8) Criminal History Background Checks for Directors, Administrators and Onsite Managers Required. The home must obtain a satisfactory fingerprint records check determination for the person being considered for employment as a director, administrator or onsite manager. The records check determination must be done in compliance with the Rules and Regulations for Criminal Background Checks, Chapter 111-8-12 provisions of O.C.G.A. § 31-7-250 et seq. or specific rules passed pursuant to the statute.

- ~~(a) In lieu of a records check application, the director, administrator or onsite manager may submit evidence, satisfactory to the Department, that within the immediately preceding 12 months the above personnel have received a satisfactory records check determination or a satisfactory preliminary records check determination, whichever is applicable.~~
- ~~(b) A person with an unsatisfactory criminal history background check determination must not serve as a director of a licensed personal care home if it is determined that such person has a criminal record, as defined in O.C.G.A. § 31-7-250 or specific rules passed pursuant to the statute.~~
- ~~(c) The director, administrator or onsite manager of the home must immediately submit to an additional fingerprint records check when the Department provides the director, administrator or onsite manager with written notice of any one of the following:~~
 - ~~1. There is reason to believe that director, administrator or onsite manager has acquired a criminal record as defined in O.C.G.A. § 31-7-250 or~~

~~specific rules passed pursuant to the statute subsequent to the Department's issuance of the permit.~~

~~2. The fingerprint record check is required to confirm identification for record search purposes.~~

~~3. The fingerprint record check is required in connection with an abuse, neglect or exploitation investigation.~~

- (9) **Criminal History Background Checks for Direct Access Employees Required.** Prior to serving as a direct access employee ~~other than a director of a licensed personal care home~~, the home must obtain a satisfactory fingerprint records check determination for the person to be hired in compliance with the Rules and Regulations for Criminal Background Checks, Chapter 111-8-12 provisions of O.C.G.A. § 31-7-250 ~~et seq. or specific rules passed pursuant to the statute.~~

~~(a) A person with an unsatisfactory criminal history background check determination must not serve as an employee of a licensed personal care home if it is determined that such person has a criminal record, unless an administrative law judge has determined that the employee is authorized to work in the personal care home.~~

~~(b) Where an applicant for employment has not been a resident of the state for three (3) years preceding the application for employment, the personal care home must attempt to obtain a criminal history background check from the local law enforcement agency of the applicant's previous state of employment.~~

~~(c) A personal care home must require its employee to immediately submit to a fingerprint records check when the Department provides the personal care home with written notice of any one of the following:~~

~~1. There is reason to believe that the employee has acquired a criminal record as defined in O.C.G.A. § 31-7-250 or specific rules passed pursuant to the statute subsequent to the Department's issuance of the permit.~~

~~2. The fingerprint record check is required to confirm identification for record search purposes.~~

~~3. The fingerprint record check is required in connection with an abuse, neglect or exploitation investigation.~~

- (10) The administrator or on-site manager must obtain and verify a five-year employment history when possible for each employee and maintain documentation in the employee's file. If the potential employee has no prior employment history, then the home must retain documentation of a satisfactory personal reference check.
- (11) Personnel file(s) for each employee must be maintained either in the home or available for inspection by departmental staff within one hour of request or prior to the end of the on-site survey and for three years following the employee's departure or discharge. These files must include all of the following:
- (a) Evidence of a satisfactory fingerprint record check determination, ~~if applicable or a satisfactory criminal history background check determination.~~
 - (b) Report of a physical examination completed by a licensed physician, nurse practitioner or physician assistant.
 - (c) Evidence of trainings, skills competency determinations and recertifications as required by these rules and, if applicable, the Rules for Proxy Caregivers, Chapter 111-8-100.
 - (d) Employment history, if previously employed, including places of work, employers and telephone contacts with previous employers.
 - (e) Supporting documentation reflecting that the employee has the basic qualifications as represented, e.g. personal references, documentation of good standing by nursing board, no findings of abuse, neglect or exploitation entered against the individual in the nurse aide registry, satisfactory report of motor vehicle driving record where the employee may be transporting residents.

- (f) Written evidence of satisfactory initial and annual work performance reviews, which can take the form of skills competency checklists, for unlicensed staff providing hands-on personal care. Where the unlicensed staff performs specialized tasks, such as health maintenance activities, such performance reviews must include the satisfactory completion of skills competency checklists as specified in applicable rules. Such reviews must be conducted by staff or contractors qualified by education, training and experience to assess that the assigned duties are being performed in accordance with applicable rules and accepted health and safety standards.
- (12) Where the home permits a resident to hire his or her own companion-sitter, proxy caregiver to perform health maintenance activities or aide of any sort, the home must require assurance that the companion-sitter, proxy caregiver or aide so hired is familiar with emergency evacuation routes and has documentation reflecting compliance with the provisions of the Rules for Proxy Caregivers, Chapter 111-8-100, as applicable.

Authority: O.C.G.A. §§ 31-2-7, 31-2-9, 31-7-2.1, 31-7-12 and 31-7-350.

Rule 111-8-62-.11 Home Accountability and Inspections

- (1) The home and its records must be available for review and examination by properly identified representatives of the Department. Inspections may be conducted both on an announced and unannounced basis. Unannounced inspections shall be conducted as needed.
- (2) Where the Department identifies rule violations, the home will receive a written report of inspection. Within 10 days of receipt of the written report of inspection, the home must develop a written plan for correcting any rule violations identified. The plan of correction must identify the specific actions the home will take promptly to come into compliance with each rule for which a deficient practice was identified and file the plan with the Department as directed.
- (3) If the home disagrees with the facts and conclusions stated in the inspection report, the home may include with its plan of correction a written statement explaining its disagreement and any evidence supporting the disagreement to the Department. Where the Department concurs with the written statement of disagreement, the Department will issue a revised inspection report to the home.

- (4) A copy of the most recent inspection report and plan of correction must be displayed in the home in a location that is routinely used by the home to communicate information to residents and visitors. Additionally, if the home maintains a website, it shall post a web link in a prominent location on the main page of the website that provides access to copies of all inspection reports and plans of correction from the previous 18 months. When the Department develops a web site for receiving plans of correction electronically and notifies the home on the inspection report of the appropriate internet address, the home also must file its plan of correction electronically on the Department's web site within 10 days of receipt of the written report of inspection or submit it in writing to the Department within 10 days.
- (5) The home must assess the effectiveness of its plan of correction in correcting the deficient practice and modify the plan of correction as necessary to ensure compliance with the rules.
- ~~(6) The home must complete and maintain an accurate and current licensed residential care profile using the specific form made available by the Department. The licensed residential care profile must be made available by the home for inspection upon request by any person.~~
- (67) The home must complete and maintain an accurate and current licensed residential care profile on file with the Department when the Department makes available a system for the submission and collection of such information electronically.
- (78) The home must provide services that are consistent with the information reported on its licensed residential care profile, its license and these rules.
- (89) A personal care home which is not licensed as an assisted living community must not use the term "assisted living" in its name or marketing materials.

Authority: O.C.G.A. §§ 31-2-7, 31-7-1, 31-7-3, 31-7-2.1, 31-7-12, 31-7-12.2 and 31-7-12.3.