

Delaware

Agency	Department of Health and Social Services, Division of Health Care Quality
Contact	Robert H. Smith
E-mail	Robert.Smith@Delaware.gov
Phone	(302) 421-7410
Website	https://www.dhss.delaware.gov/dhss/dhcq/

Licensure Term Assisted Living Facilities

Definition Assisted living is a special combination of housing, supportive services, supervision, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living and/or instrumental activities of daily living.

Regulatory and Legislative Update The Delaware Department of Health and Social Services (DHSS), Division of Health Care Quality Office of Long Term Care Residents Protection, licenses assisted living facilities (ALFs) that offer living arrangements to medically stable persons who do not require skilled nursing services and supervision.

There have been no regulatory or legislative updates in the past year.

Facility Scope of Care Assisted living is designed to offer living arrangements to medically stable persons who do not require skilled nursing services and supervision. Facilities must provide the following services: ensure the resident's service agreement is properly implemented; provide or ensure the provision of all necessary personal services, including all ADLs; facilitate access to appropriate health care and social services; and provide or arrange appropriate opportunities for social interaction and leisure activities.

Limitations of Services An assisted living facility may not admit, provide services to, or permit the provision of services to individuals who, based on the uniform resident assessment, meet any of the following conditions:

- (1) Require care by a nurse that is more than intermittent or for more than a limited period of time;
- (2) Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is a registered nurse (RN) to provide appropriate care;
- (3) Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;
- (4) Are bedridden for more than 14 days;

- (5) Have stage III or IV skin ulcers;
- (6) Require a ventilator;
- (7) Require treatment for a disease or condition that requires more than contact isolation;
- (8) Have an unstable tracheotomy or a stable tracheotomy of less than six months' duration;
- (9) Have an unstable PEG tube;
- (10) Require an intravenous or central line with an exception for a completely covered subcutaneously implanted venous port, provided the assisted living facility meets the following standards:

(a) Facility records must include the type, purpose, and site of the port, the insertion date, and the last date medication was administered or the port flushed.

(b) The facility must document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals, and any facility reports.

(c) The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians, or third party providers;

(11) Wander such that the assisted living facility would be unable to provide adequate supervision or security arrangements;

(12) Exhibit behaviors that present a threat to the health or safety of themselves or others such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and

(13) Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented reasonable efforts for a period of no more than 60 days.

The provisions above do not apply to residents under the care of a hospice program licensed by the DHSS as long as the hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.

An assisted living facility may request a resident-specific waiver to serve a current resident who temporarily requires care otherwise excluded. The resident's condition should be expected to improve within 90 days.

Move-in Requirements Including Required Disclosures/Notifications

Prior to executing a contract, each ALF must provide to prospective resident a complete statement with all charges for services, materials and equipment which shall, or may be, furnished to the resident during the period of occupancy. The state also specifies additional non-financial provisions that must be in the contract or service agreement. There is an additional disclosure statement required for facilities that offer specialized care for individuals with memory impairment (see 'Unit and Staffing Requirements for Serving Persons with Dementia' section below).

Resident Assessment Requirements and Frequency

The “Uniform Assessment Instrument” sets forth standardized criteria developed by the Division of Long Term Care Residents Protection to assess each resident’s functional, cognitive, physical, medical, and psychosocial needs and status. The assisted living facility must use the UAI to evaluate each resident on both an initial and ongoing basis. The UAI is available here: https://www.dhss.delaware.gov/dhss/dhcg/files/dltcrp_uai_revision_01232008_final_a.pdf.

A prospective resident must have an initial resident assessment completed, using the Division-approved form, by an RN acting on behalf of the assisted living facility no more than 30 days prior to admission. In addition, within 30 days prior to admission, a prospective resident shall have a medical evaluation completed by a physician. Assisted living facilities must develop, implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction. On at least a semiannual basis, each facility must survey each resident regarding his/her satisfaction with services provided. Facilities must retain all surveys for at least two years and they will be reviewed during inspections. Documentation that addresses actions that were taken as a result of the surveys must be maintained for at least one year.

Medication Management

Facilities must comply with the Nurse Practice Act. Residents may receive certain medications and treatments from unlicensed assistive personnel trained under the Assistance with Self-Administration of Medication (“AWSAM”) program and ALF Specific Course as approved by the Board of Nursing. The facility must establish and adhere to written medication policies and procedures that address a series of issues related to obtaining, storing, treatments and administering medication. A quarterly pharmacy review conducted by a pharmacist is required.

Staffing Requirements

An assisted living facility that offers specialized care for individuals with memory impairment must disclose its policies and procedures that describe the form of care and treatment provided that is in addition to the care and treatment required by law and regulation.

Staff must be adequately trained, certified, and licensed to meet the requirements of the residents.

Each facility must have a director who is responsible for the operation of the program. Facilities licensed for 25 beds or more must have a full-time nursing home administrator. Facilities licensed for five through 24 beds must have a part-time nursing home administrator on site and on duty at least 20 hours per week. The director of a facility for four beds or fewer must be on site at least eight hours a week.

Each facility must have a Director of Nursing (DON) who is an RN. Facilities licensed for 25 or more beds must have a full time DON; facilities licensed for five to 24 beds must have a part-time DON on site and on duty at least 20 hours a week; and a DON of a facility for four or fewer beds must be on site at least eight hours a week. Resident assistants must be at least 18 years of age. At least one awake staff person must be on site 24 hours per day who is qualified to administer or assist with self-administration of medication, has a knowledge of emergency procedures, basic first aid, CPR, and the Heimlich Maneuver. Overall staffing must be sufficient in number and staff must be adequately trained, certified, or licensed to meet the needs of the residents and to comply with applicable state laws and regulations. There are no staffing ratios.

Administrator/Director Education and Training Requirements

The nursing home administrator for facilities with five or more beds must maintain current certification as required by state law.

For facilities with four beds or fewer, the state specifies reduced requirements for the director of the facility and for the on-site manager. The director of a facility with four or fewer beds must: hold a baccalaureate degree in a health or social services field or business administration; hold an Associate's degree in a health or social services field or business administration and at least two years of full-time equivalent work experience in these disciplines; be an RN with a combined total of four years full-time equivalent education and related work experience; or have at least four years full-time equivalent work experience as a licensed practical nurse, or five years full-time equivalent work experience in a health or social services field or business

administration. The on-site manager of a facility with four or fewer beds must: possess a high school diploma or its equivalent; be certified as a certified nurse assistant (CNA) with at least three years of experience providing care in a health care setting; complete an orientation program in accordance with the CNA regulations; and receive at least 12 hours of regular in-service education annually.

Direct Care Staff Education and Training Requirements

Staff must be adequately trained to meet the needs of the residents and the facility must provide and document staff training. Facilities shall provide orientation training to all new staff.

Resident assistants must receive facility-specific orientation covering specified topics such as, but not limited to, fire and life safety, infection control, basic food safety, job responsibilities, and the health and psychosocial needs of the population being served. Resident assistants must receive at least 12 hours of in-service education annually.

On-site house managers of facilities with four beds or fewer must receive a minimum of 12 hours of in-service education annually.

Quality Requirements

Facilities are required to develop, implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

Infection Control Requirements

Assisted living facilities shall establish an infection prevention and control program based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines. The program must cover all services and all areas of the assisted living facilities, including provision of the appropriate personal protective equipment for all residents, staff, and visitors. The individual designated to lead the assisted living facility's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases, and the plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the assisted living facility's infection control outcomes. All staff shall receive orientation at the time of employment and annual in-service education regarding the program.

Emergency Preparedness Requirements

Facilities are required to comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.

Regular fire drills shall be held at least quarterly on each shift, including written records of attendance at such drills. Each facility must develop and maintain all-hazard emergency plans for evacuation and sheltering in place, which must be submitted to the Division of Health Care Quality and the Delaware Emergency Management Agency in a digital format and it must conform to the template prescribed by the Division of Health Care Quality. The all-hazard emergency plan must include plans to address staffing shortages and facility demands. Additionally, staff on all shifts are to be trained on emergency and evacuation plans and evacuation routes shall be posted in a conspicuous place at each nursing station. In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.

With an application for a license and annual renewal of a license, each facility is required to provide a current all hazards emergency plan and copies of the FEMA certificate of achievement which demonstrate that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months. The Division of Health Care Quality may grant an extension of time for either requirement upon request and for good cause.

Life Safety Requirements

Assisted living facilities must comply with all applicable state and local fire and building codes. Facilities must develop and implement a plan for fire safety and emergencies through staff training and drills and a plan for relocation and/or evacuation and continuous provision of services to residents in the event of permanent or temporary closure of the facility. The evacuation plan must be approved by the fire marshal having jurisdiction and include the evacuation route, which must be conspicuously posted on each floor and in each unit. Facilities are required to orient staff and residents to the emergency plan, conduct fire drills in accordance with state fire prevention regulations, conduct other emergency drills or training sessions on all shifts at least annually, and maintain records identifying residents needing assistance for evacuation.

Specified incidents must be reported within eight hours to the Division of Health Care Quality including, but not limited to: fire due to any cause, abuse, neglect, mistreatment, financial exploitation, resident elopement, death of a resident, significant injuries, a significant error or omission in medication/treatment, a burn greater than first degree, attempted suicide, poisoning, an epidemic, and circumstances providing a reasonable basis to suspect drugs have been diverted.

Medicaid Policy and Reimbursement

The Delaware Diamond State Health Plan Plus is a Medicaid managed long-term care program, which is currently being implemented throughout the state through a Section 1115 demonstration waiver. The program covers community-based residential alternatives that include Assisted Living Facilities.

Citations

Delaware Department of Health and Social Services, Division of Health Care Quality. (February 1, 2022). *Delaware Administrative Code Title 16: 3225 Assisted Living Facilities*. <https://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Health%20Care%20Quality/3225.pdf>

Delaware Department of Health and Social Services, Division of Health Care Quality. (n.d.) *Delaware Licensed Assisted Living Facilities*. <http://www.dhss.delaware.gov/dhss/dltcrp/assistedlivingfacilities.html>

Delaware Department of Health and Social Services, Division of Medicaid and Medical Assistance. (2022). *Delaware Diamond State Health Plan (DSHP) 1115 Demonstration Waiver 2022 Annual Report*. https://dhss.delaware.gov/dhss/dmma/files/de_dshp_q4_annual_report_2022.pdf

Centers for Medicare and Medicaid Services and Delaware Department of Health and Social Services. (2019). *Delaware's DSHP 1115 Waiver Approval Letter*. https://dhss.delaware.gov/dmma/files/de_dshp_hcbs_approval_letter.pdf