

New York

Agency Department of Health, Division of Adult Care Facility/Assisted Living Surveillance

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Opening Statement

The New York State Department of Health is the agency that oversees Assisted Living in the state.

Adult Care Facilities (ACF) provide long-term, non-medical residential services to adults who are substantially unable to live independently due to physical, mental, or other limitations associated with age or other factors. Residents must not require the continual medical or nursing services provided in acute care hospitals, in-patient psychiatric facilities, skilled nursing homes, or other health related facilities, as Adult Care Facilities are not licensed to provide for such nursing or medical care.

The New York State Department of Health licenses and regulates three types of Adult Care Facilities:

Adult Homes (AH): Established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, and supervision to five or more adults unrelated to the operator.

Enriched Housing Programs (EHP): Established and operated for the purpose of providing long-term residential care to five or more adults primarily persons sixty-five years of age or older, in community-integrated settings resembling independent housing units. The program provides or arranges for the provision of room, board, housekeeping, personal care, and supervision.

Residences for Adults: Established and operated for the purpose of providing long-term residential care, room, board, housekeeping, case management, activities and supervision to five or more adults, unrelated to the operator, who are unable or substantially unable to live independently.

Licensure Term

Adult-Care Facilities, Adult Homes, Enriched Housing Programs, and Assisted Living Residences

Definition

Adult-care Facility: A family-type home for adults, a shelter for

adults, a residence for adults or an adult home, which provides temporary or long-term residential care and services to adults who—by reason of physical or other limitations associated with age, physical or mental disabilities or other factors—are unable or substantially unable to live independently. These adults do not require continual medical or nursing care.

Adult Home: A type of adult-care facility that provides long-term residential care, room, board, housekeeping, personal care, and supervision to five or more adults unrelated to the operator.

Enriched Housing Program: A type of adult-care facility that provides long-term residential care to five or more adults (generally 65 years of age or older) in community-integrated settings resembling independent housing units and provides or arranges for room, board, housekeeping, personal care, and supervision. Dwelling units in this setting resemble apartments.

All operators are required to have either a base licensure as an adult home or an enriched housing program.

Assisted Living and an Assisted Living Residence: A type of adult care facility that has a base licensure as an adult home or enriched housing program and provides a higher level of care. These operators may also be certified as special needs assisted living to provide dementia care, or as enhanced assisted living to support aging in place. These homes provide or arrange for housing, on-site monitoring, and personal care and/or home care services, either directly or indirectly, in a homelike setting to five or more adults unrelated to the assisted living provider. An assisted living operator must provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence, and privacy in the least restrictive and most homelike setting consistent with the resident's preferences and physical and mental status.

Enhanced Assisted Living Residence: A certification issued by the Department of Health and may be obtained for either a portion of or an entire residence. The certification authorizes an assisted living residence to provide "aging in place" by retaining residents who desire to continue to live in that residence and who:

- (1) Are chronically chairfast and unable to transfer, or chronically require the physical assistance of another person to transfer;
- (2) Chronically require the physical assistance of another person in order to walk;
- (3) Chronically require the physical assistance of another person to

climb or descend stairs;

(4) Are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or

(5) Have chronic unmanaged urinary or bowel incontinence.

Special Needs Assisted Living: A certification issued by the Department of Health that allows a facility to serve individuals with special needs, such as dementia or cognitive impairments. A facility must submit to the Department a special needs plan demonstrating how the special needs of the residents will be safely and appropriately met. The Department of Health has developed guidance specifically to ensure adequate staffing and training.

Assisted Living Program: Separate from the assisted living residence classification is the assisted living program, which serves individuals who are medically eligible for nursing home placement, but who are not in need of the highly structured, medical environment of a nursing facility and whose needs could be met in a less restrictive and lower cost residential setting. Assisted living programs are responsible for providing residents with long term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services. The programs are required to hold dual licenses/certification as an adult home or enriched housing program and as a licensed home care services agency (LHCSA) (they do not have to hold a dual license, they can contract with a LHCSA if they are not certified as one), long term home health care program, or certified home health agency (CHHA). If the assisted living program is licensed as a LHCSA, it must contract with a CHHA for provision of skilled services to its residents. Assisted living programs may receive Medicaid reimbursement for the health care services provided, whereas an assisted living resident may not.

Regulatory and Legislative Update

The Department of Health adopted final regulations on Adult Home Admission and Reporting Requirements; and finalized Adult Home Quality Improvement Committee Requirements Regulation. The COVID-19 vaccine requirement for personnel was removed.

https://regs.health.ny.gov/sites/default/files/pdf/recently_adopted_regulations/Adult%20Home%20Admission%20and%20Reporting%20Requirements.pdf

Move-in Requirements Including Required Disclosures/Notifications

When any marketing materials or a copy of the residency agreement is distributed, the operator must provide the following on a separate information sheet:

(1) The consumer information guide developed by the Commissioner of the Department of Health. Residents and potential

residents may be referred to the Department's website, but a hard copy must be provided by the facility if requested.

(2) A statement listing the residence's licensure and if the residence has an enhanced assisted living and/or special needs enhanced assisted living certificate, and the availability of enhanced and/or special needs beds and the services provided under those certifications.

(3) Specific ownership information related to entities that provide care, material, equipment, or other services to the residents.

(4) A statement regarding the ability of residents to receive services from providers with whom the operator does not have an arrangement.

(5) A statement that residents have the right to choose their health care providers.

(6) A statement regarding the availability of public funds for payment for residential, supportive, or home health services, including the availability of Medicare for coverage of home health services.

(7) A statement regarding military status of the resident and/or spouse and provide the nearest county or city veterans' agency and the nearest veterans' service officer. With permission of the individuals identifying as veterans or spouses of veterans, the assisted living residence shall transmit veteran status information to the Department of Veterans' Services.

(8) The toll-free number for the Department of Health for complaints regarding home care services and services provided by the assisted living operator.

(9) Information regarding the availability of ombudsman services and the telephone numbers of state and local ombudsmen.

Facility Scope of Care

Adult Home and Enriched Housing Program: At a minimum, must provide room, board, supervision, personal care, housekeeping, case management, activities, food service, and assistance with self-administration of medication.

Assisted Living Residence: Provides daily food service, 24-hour onsite monitoring, case management services, and the development of an individualized service plan for each resident.

Certified Enhanced Assisted Living Residence: May allow residents to age in place when the provider, the resident's physician, and, if necessary, the resident's licensed or certified home care agency agree that the additional needs of the resident can be safely met.

Limitations of Services

Assisted Living, Enhanced Assisted Living and Special Needs Assisted Living shall not include:

- (1) residential health care facilities or general hospitals licensed under Article 28 of the Public Health Law;
- (2) continuing care retirement communities which possess a certificate of authority pursuant to Article 46 of this chapter, unless the continuing care retirement is operating an assisted living residence as defined under this section;
- (3) residential services for persons that are provided under a license pursuant to Article 16, 19, 31 or 32 of the Mental Hygiene Law or other residential services primarily funded by or primarily under the jurisdiction of the Office for Mental Health;
- (4) naturally occurring retirement communities, as defined in section 209 of the Elder Law;
- (5) assisted living programs approved by the Department pursuant to section 461-l of the Social Services Law;
- (6) public or publicly assisted multi-family housing projects administered or regulated by the U.S. Department of Housing and Urban Development or the Division of Housing and Community Renewal or funded through the Homeless Housing Assistance Program that were designed for the elderly or persons with disabilities, or homeless persons, provided such entities do not provide or arrange for home care, twenty-four hour supervision or both, beyond providing periodic coordination or arrangement of such services for residents at no charge to residents. Except, however, such entities that are in receipt of grants for conversion of elderly housing to assisted living facilities pursuant to section 1701-q-2 of the United States Code shall be licensed as an assisted living residence pursuant to Article 46-B of the Public Health Law and this Part;
- (7) an operating demonstration as such term is defined in paragraph (d) of subdivision (1) of section 4403-f of the Public Health Law;
- (8) hospice and hospice residences as defined pursuant to section 4002 of the Public Health Law;
- (9) an adult care facility as defined in subdivision (21) of section 2 of the Social Services Law that is not utilizing the term assisted living (or any derivation thereof) or is not required to obtain licensure as assisted living or certification as enhanced assisted living or special needs assisted living; and
- (10) independent senior housing, shelters or residences for adults.

Residents who have stable medical conditions and are capable of self-preservation with assistance may be admitted. Regulations specify when persons may not be admitted, including but not limited to people: who need continuous nursing care; are chronically

bedfast; or are cognitively, physically, or mentally impaired to the point that the resident's safety or safety of others is compromised. No adult home with a capacity of 80 or greater may admit or retain more than 25 percent census of residents with serious mental illness.

Certified Enhanced Assisted Living Residence: A resident in need of 24-hour skilled nursing care or medical care may continue residency when all of the following conditions are met:

- (1) The resident in need of 24-hour skilled care hires appropriate nursing, medical, or hospice staff to meet his or her needs;
- (2) The resident's physician and home care services agency determine and document that the resident can be safely cared for in the residence;
- (3) The assisted living provider agrees to retain the resident and coordinate the care for all providers; and
- (4) The resident is otherwise eligible to reside at the residence.

Resident Assessment Requirements and Frequency

Adult Home: A medical evaluation and an interview between the administrator (or a designee) and the resident or the resident's representative must be conducted. In the event that a proposed resident has a known history of chronic mental disability, or the medical evaluation or resident interview suggests such disability, then a mental health evaluation must be conducted.

Enriched Housing Program: Prior to admission, a functional assessment must be completed on a form prescribed or approved by the Department. Each functional assessment must address activities of daily living, instrumental activities of daily living, sensory impairments, behavioral characteristics, personality characteristics, and daily habits. The functional assessment, a medical assessment and a mental health evaluation if needed must be conducted when a change in a resident's condition warrants and no less than once every 12-month period, of the needs and goals of each resident and of the capability of the facility program to meet those needs and expressed goals.

Assisted Living Residence: Each assisted living resident will have an individualized service plan (ISP) developed when they move into a residence. The ISP is developed jointly by the resident, the resident's representative if applicable, the assisted living operator, a home care agency (as determined by the resident's physician), and in consultation with the resident's physician. The ISP must address the medical, nutritional, rehabilitation, functional, cognitive, and other needs of the resident. The ISP must be reviewed and revised at least every six months or when required by the resident's changing care

needs and goals of each resident and of the capability of the facility program to meet those needs and expressed goals.

DOH adopted regulations that clarify the pre-admission screening process and reporting process for adult home residents with a diagnosis of serious mental illness (SMI). The regulations amend sections 487.4 and 487.10 of Title 18 of the New York Codes, Rules, and Regulations (NYCRR) to require adult homes to:

- Clarify the pre-admission screening requirements for persons suspected of having SMI;
- Continue to report any resident with SMI until DOH issues a written notice to the facility that such reporting is no longer required for that resident; and
- Submit a roster of all residents to DOH on a quarterly basis.

Medication Management

Assistance with self-administration of medication is permitted in facilities. This includes prompting, identifying the medication for the resident, bringing the medication to the resident, opening containers, positioning the resident, disposing of used supplies, and storing the medication.

Staff Scheduling Requirements

Operators may be certified as special needs assisted living to provide dementia care. Dementia units must be designed as self-contained units. Fully locked facilities are prohibited, but units must have a delayed-egress system on all external doors as well as window stops and enclosed courtyards. Facilities must meet additional fire safety rules.

Any adult-care facility with approved dementia units is required to provide staff training in characteristics and needs of persons with dementia, including behavioral symptoms, and mental and emotional changes. The training should include methods for meeting the residents' needs on an individual basis. Further, in order to obtain approval for a special need assisted living residence, an operator must submit a plan to the Department which must include not only proposed staffing levels, but also staff education, training, work experience, and professional affiliations or special characteristics relevant to the population the residence is intending to serve (including Alzheimer's or other dementias). Staffing for a special need assisted living residence shall provide, either directly or through contract, sufficient nursing staff to meet the health care needs of the residents. Nursing coverage requirements, at minimum include: A registered professional nurse on duty and on-site at the residence for eight hours per day and a licensed practical nurse shall be on duty for the remainder of such week; a registered professional nurse on-call and available for consultation 24-hours a day, seven

days a week if not available onsite and additional nursing coverage, as determined necessary and documented by the resident's medical evaluation or otherwise by the resident's attending physician and/or the Individual service plan

Adult Home: An administrator must be employed to be directly accountable for operating and maintaining the facility in compliance with applicable requirements. Facilities must have a case manager and staffing sufficient to provide the care needed by residents. The regulations specify staffing ratios. For adult homes, a minimum of 3.75 hours of personal services staff time is required per week per resident.

Enriched Housing Program: The facility must have a program coordinator responsible for operating and maintaining the program in compliance with applicable requirements; a case manager to evaluate residents' needs and perform other case management duties, including investigating and reporting reportable incidents to the Department; and personal care staff to assist residents. Facilities must have staffing, sufficient to provide the care needed by residents. Nursing coverage requirements, at minimum include: A registered professional nurse on duty and on-site at the residence for eight hours per day and a licensed practical nurse shall be on duty for the remainder of such week; a registered professional nurse on-call and available for consultation 24-hours a day, seven days a week if not available onsite and additional nursing coverage, as determined necessary and documented by the resident's medical evaluation or otherwise by the resident's attending physician and/or the Individual service plan. The regulations specify staffing ratios. A minimum of 6 hours of personal services staff time is required per week per resident.

Assisted Living Residence: The facility must have an administrator who is responsible for daily operations and compliance with applicable rules; a case manager to assist residents with housing issues, information about local services and activities, and contacting appropriate responders in urgent and emergency situations; and resident aides to provide personal care assistance. Facilities certified to provide enhanced assisted living must, in addition, have licensed practical nurses, registered nurses, and home health aides. There are no minimum staffing ratios, though resident aides must be present in sufficient numbers 24-hours a day to meet resident's needs.

**Administrator/Director
Education and Training
Requirements**

Adult Home and Assisted Living Residence: Administrators generally must be at least 21 years of age, be of good moral character as evidenced by three letters of recommendations and have varying levels of education and experience based in part on the number of residents in the facility. For example, in a facility with 24 beds or less, an administrator must:

- (1) have a high school diploma or equivalency certificate, plus three years of related work experience, one year of which includes supervisory experience;
- (2) an associate degree from an accredited college or university in an approved course of study, plus two years of related work experience; or
- (3) a Bachelor's degree from an accredited college or university in an approved course of study, plus one years of related supervisory work experience.

The experience requirements increase as the size of the facility increases and are detailed in regulations.

Administrators not holding a current New York license as a nursing home administrator must complete a minimum of 60 hours of continuing education every two years.

**Direct Care Staff
Education and Training**

The operator shall provide staff sufficient in number and qualified by training and experience to render, at a minimum, those services mandated by law or regulation, including:

- (1) Case Management
- (2) Personal Care
 - (i) Resident aides shall receive 40 hours of initial training as specified in the Department's training requirements and curriculum or an approved equivalent program.
 - (ii) Resident aides shall receive 12 hours of ongoing, in-service education annually in topics applicable to their responsibilities.

Any adult-care facility with approved dementia units is required to provide staff training in characteristics and needs of persons with dementia, including behavioral symptoms, and mental and emotional changes. The training should include methods for meeting the residents' needs on an individual basis. Further, in order to obtain approval for a special need assisted living residence, an operator must submit a plan to the Department which must include not only proposed staffing levels, but also staff education, training, work experience, and professional affiliations or special characteristics relevant to the population the residence is intending

to serve (including Alzheimer's or other dementias).

Quality Requirements

Effective March 13, 2024 The Department of Health implemented a regulation for adult homes and residences for adults requiring that quality assurance plans now include infection control standards. Additionally, a quality improvement committee must be established to meet at least every six months to review monitoring results, assess the effectiveness of corrective action policies, and identify trends and improvement activities. This committee should consist of the facility administrator or operator, the resident council president or a resident representative, and frontline staff representatives from each operational area.

Operators must have records documenting the development, implementation and, at a minimum, the bi-annual updating of quality assurance activities for each area of facility operation. These must include, at a minimum, the development and maintenance of performance standards, measurement of adherence to such standards and to applicable state and local laws and regulations, identification of performance failures, design and implementation of corrective action.

Infection Control Requirements

Operators of assisted living residences that are adult homes must maintain compliance with the disaster and emergency planning requirements stated at 18 NYCRR section 487.12.

(b) Operators of assisted living residences that are enriched housing programs must maintain compliance with the disaster and emergency planning requirements stated at 18 NYCRR section 488.12.

(c) Emergency plans and procedures must include an evacuation plan to address any emergency situation that necessitates full or partial evacuation.

(d) Emergency plans and procedures must explicitly address the coordination and allocation of roles and responsibilities between assisted living residence employees and the employees of each home care services agency that has admitted a resident of the assisted living residence. The assisted living residence must maintain documentation that all assisted living residence employees, and all home care services agency employees, and their supervisors, who provide services to residents, are familiar with and understand their roles and responsibilities in the event of a disaster or emergency.

**Emergency
Preparedness**

(e) Operators of assisted living residences shall obtain from the Department's Health Provider Network (HPN) an HPN account, if the operator does not already have one by virtue of operating an adult home or enriched housing program. Operators shall maintain compliance with all of the provisions of sections 487.12(k) and 488.12(k) of Title 18 NYCRR for adult homes and enriched housing programs, respectively.

(f) Operators of residences with enhanced assisted living certification must update the written disaster and emergency plan at least twice a year, and periodically, but at least annually, review the written plan with existing staff.

The operator shall have a written plan which details the procedures to be followed for the proper protection of residents and staff in the event of an actual or threatened emergency or disaster which interrupts normal service. The plan shall include, but not be limited to:

- (1) procedures and designated staff responsibilities for execution of any part of the plan;
- (2) procedures for full and partial evacuation of the facility, including: (i) designation of staff responsible for the conduct and supervision of evacuation; (ii) schedule and procedures for training all staff in evacuation procedures and responsibility; (iii) procedures for the conduct of monthly fire drills for staff; (iv) procedures for the conduct of quarterly fire drills for staff and residents; and (v) specific and current procedures for evacuation of any residents with need for individual procedures;
- (3) preliminary plans for relocation of residents, if necessary.
- (4) coordination of the facility plan with such community resources and local disaster and emergency planning organizations as may be available to provide temporary shelter, food and clothing, and other essential services; and
- (5) plans for the maintenance of service in the event of reductions in personnel.

The operator shall conduct training for each new and current

employee and volunteer in both the overall plan and the individual's specific responsibility in its execution and shall review with staff their performance after the conduct of each drill.

Evacuation procedures shall be conspicuously posted on every floor and in each wing of the facility.

Emergency contact numbers and procedures shall be available to the person(s) designated with supervisory service responsibilities.

To ensure that each shift has an opportunity to practice its respective responsibilities:

(1) the operator shall conduct monthly fire drills for staff and volunteers;

(2) these monthly fire drills shall: (i) be conducted at varied times during the day and night; (ii) include both full and partial evacuation of the facility; and (iii) simulate different fire conditions.

At least once in each calendar quarter, residents shall participate in a fire drill; every 12 months, at least one of these drills must include total evacuation of the facility.

The operator shall arrange, at least annually, to have the local fire authorities, certified service agency or department staff observe one fire drill in which residents participate.

The operator shall maintain a record of all fire drills, including the date and time of the drill, a description of the drill, the number of residents participating and the signatures of participating staff and volunteers.

Any time there is a work stoppage, a fire within the facility, failure of any one of the fire prevention or detection systems, lack of hot water, interruption or shut-off of essential services or any circumstances necessitating the implementation of the disaster and emergency plan, the department shall be notified by the next business day.

Medicaid Policy and Reimbursement

New York's state plan covers personal care services offered under the assisted living program. In addition to the program, services provided by adult-care facilities may be covered for eligible residents. Medicaid reimbursement is not available for people in assisted living residences.

Life Safety Requirements

Adult Home and Assisted Living Residence for Adults:

- (1) Regulations require an automatic sprinkler system throughout in buildings housing 25 or more residents;
- (2) The Building Code of New York State (modeled after the International Building Code) requires an automatic sprinkler system in accordance with the applicable occupancy group designated for the adult-care facility;
- (3) Regulations require a supervised smoke detection system installed throughout the building; and
- (4) Regulations require all fire protection systems required to be directly connected to the local fire department or to a 24/7-attended central station.

Enriched Housing Program: The state building code requires the installation of automatic sprinkler systems, detection systems, and fire alarm and early warning systems in accordance with the applicable occupancy group designated for the adult-care facility.

The state has additional requirements for assisted living programs.

Citations

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New York Codes. (2023) Title 10, Section 2.62: COVID-19 Testing Requirements. <https://regs.health.ny.gov/volume-title-10/content/section-26-investigations-and-response-activities>

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