VERMONT

Citation Residential care homes (Level III, IV), Regulations effective 10/3/00
Assisted living residences, Regulations effective 03/15/03

General Approach and Recent Developments

Regulations for a new category of assisted living residences went into effect in March 2003. Developers of assisted living residences are continually challenged to build residences on a scale that reflect consumer preferences. The State is encouraging the development of small scale residences with mixed acuity.

Residential care home rules were revised in 2000. Assistive Community Care Services, a Medicaid state plan service, and Medicaid waiver reimbursement are available to Level III facilities and assisted living residences. The Medicaid waiver was amended to cover assisted living residences. The State has a grant from the Coming Home Program to expand affordable assisted living in rural areas.

<table>
<tr><th colspan="7">Supply</th></tr>
<tr><th rowspan="2">Category</th><th colspan="2">2004</th><th colspan="2">2002</th><th colspan="2">2000</th></tr>
<tr><th>Facilities</th><th>Units</th><th>Facilities</th><th>Units</th><th>Facilities</th><th>Units</th></tr>
<tr><td>Residential care facilities (Level III)</td><td>95</td><td>2,150</td><td rowspan="2">109</td><td rowspan="2">2,213</td><td rowspan="2">114</td><td rowspan="2">2,351</td></tr>
<tr><td>Residential care facilities (Level IV)</td><td>15</td><td>152</td></tr>
<tr><td>Assisted Living residences</td><td>3</td><td>108</td><td>NA</td><td>NA</td><td>NA</td><td>NA</td></tr>
</table>

Definition

Assisted living residence means a program or facility that combines housing, health, and supportive services to support resident independence and aging-in-place. At a minimum, assisted living residences shall offer, within a homelike setting, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living shall promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.

Assisted living residences must meet the applicable licensing requirements of the residential care home licensing regulations for a Level III home, and all assisted living residence units must further meet the definition for assisted living residences as described above.

Variances from regulations may be granted by the licensing agency using the same criteria and procedures set forth in the residential care home licensing regulations.

Residential care home is a place, however named, excluding a licensed foster home, which provides for profit or otherwise, room, board, and personal care to three or more residents unrelated to the licensee. Level III means a residential care home licensed to provide room, board, personal care, general supervision, medication management, and nursing overview. Level IV homes do not provide nursing overview.

Unit Requirements

Assisted living residences. Residential living space must be a minimum of 225 square feet per unit, excluding bathroom and closets. Each unit must provide accessible or adaptable sleeping, living, and eating areas, and be built in conformance with the Americans with Disabilities Act Accessibility Guidelines or the equivalent state building code specifications. Units must include a private bathroom, bedroom, living space, and kitchenette, adequate storage, lockable door, individual temperature controls and be equipped with emergency response systems to alert on-duty staff. Units may be shared only by choice. Kitchenettes must include food preparation and storage area, refrigerator with freezer, cabinets, counter space, sink and source of hot and cold running water, a stove or microwave that can be removed or disconnected, and outlets.

Pre-existing structures being converted or remodeled from another use must have a minimum of 160 square feet not including the bathroom or storage space. Kitchen capacity is not required, but a community kitchen must be available.

Residential care homes. The regulations indicate that every effort must be made to provide a home-like environment. Each private bedroom must have at least 100 square feet of usable floor space and multi-bed rooms must have 80 square feet per bed. After October 1993, all new homes may offer only single or double occupancy rooms. One bath, toilet, and sink is required for every eight residents.

Admission/Retention Policy

Assisted living residences. Residents must be age 18 and over, and may be admitted except in the following conditions:

- A serious acute illness requiring medical, surgical or nursing care provided by a general or special hospital;
- Ventilators;
- Respirators;
- Care of Stage III or IV ulcers;
- Nasopharyngeal, oral or tracheal suctioning; or
- Two-person assistance to transfer from bed or chair or to ambulate.

Current residents who develop a serious, acute illness may be retained as long as their care needs are met by appropriate licensed personnel. Facilities must provide personal care and nursing services to meet a resident's needs if he or she has a late loss ADL score of 10, provided that the resident's needs can be met by one staff person at a time;

any cognitive impairment that is moderate or lesser degree of severity; and any behavioral symptoms consistently responding to appropriate intervention.

Residents who have an identified acute or chronic medical problem or who are deemed to need nursing overview or supervision shall be under the continuing general supervision of a physician of their choosing.

Residents may only be involuntarily discharged if they pose a serious threat to self or other residents that cannot be resolved through care planning and are not capable of entering into a negotiated risk agreement; are ordered by a court to move; or fail to pay rent, service, or care charges; the resident refuses to abide by the terms of the admission agreement; or the resident has care needs above the mandatory scope of aging in place and the assisted living residence can no longer meet the resident's level of care needs or has a policy to discharge residents with such needs.

Residential care homes. Residential care homes may retain people who need nursing services beyond nursing overview and medication management if the following conditions are met:

- The services are received less than three times a week, or are provided seven days a week for no more than 60 days and the resident's condition is improving;
- The home has an RN on staff or a contract with a home health agency;
- The home is able to meet the resident's needs without detracting from services to other residents;
- There is a written agreement concerning which nursing services the home provides or arranges and which is explained to the resident before admission or at the time of admission; the agreement includes how services are paid for and the circumstances under which a resident will be required to move; and
- Residents are fully informed of their options and agree to such care in the residential home.

Residents requiring intravenous therapy, ventilators or respirators, daily catheter irrigation, feeding tubes, care of Stage III or IV decubitus; suctioning, or sterile dressings may only be served under a variance from the Department. Variances are considered and issued on a case by case basis. A series of requirements are described for facilities providing nursing overview, administration of medications, and nursing care.

Nursing Home Admission Policy

Eligible beneficiaries must require daily service due to impairments in ADLs or need for rehabilitation, or have one or more specific conditions and treatments, or require 24-hour care due to psycho-social factors. Eligibility is met if the person has qualifying needs in any of the three categories of service. ADL qualifying needs include the daily need for moderate or total assistance with bathing, dressing, eating, ambulation, transferring, and bowel and bladder functions (or with a combination of these needs so that daily help at the moderate or total assistance level is needed). Qualifying conditions and treatments include assistance with intravenous fluids/medications,

injections, pain management, pressure sores, airway suctioning, tube feedings, ventilator or respirator care, or skilled wound care. Psycho-social factors cover persons with impaired judgment and/or confusion requiring constant or frequent direction with ADLs or behavioral symptoms such as wandering, aggression, and /or inappropriate behavior requiring a controlled environment.

Services

Assisted living residences provide services required for Level III residential homes plus:

- a program of activities and socialization opportunities, including periodic access to community resources;
- social services which include information, referral, and coordination with other community programs and resources; and,
- a negotiated risk process.

A resident care plan must be developed and maintained, describing the assessed needs and choices of the resident, and shall support the resident's dignity, privacy, choice, individuality, and independence. The plan shall be reviewed at least annually, or upon a significant change in condition. "Negotiated risk" means a formal, mutually-agreed upon, written understanding that results after balancing a resident's choices and capabilities with the possibility that those choices will place the resident at risk of harm. Negotiated risk does not constitute a waiver of liability.

Residential care homes provide personal care, medication management, laundry, meals, toiletries, transportation, and, in Level III homes, nursing overview. Nursing overview means a process in which a nurse assures that the health and psycho-social needs of the resident are met. The process includes: observation, assessment, goal setting, education of staff, and the development, implementation, and evaluation of a written individualized treatment plan to maintain the resident's well being.

Intravenous therapy; ventilators or respirators, daily catheter irrigation, feeding tubes, care of Stage III or IV decubitus ulcers, suctioning, and sterile dressings may not be provided to any resident unless a variance is approved by the state licensing agency.

Dietary

Residential care homes. Three well balanced, attractive, and satisfying meals and supplemental nourishment are required. The rules specify the total daily requirements for meals (required daily servings and average size). Written physicians' orders are needed for therapeutic diets. Draft rules propose that meals served each day must provide 100 percent of the recommended daily allowances as established by the Food and Nutrition Board.

Assisted living residence. Same as above.

Agreements

Assisted living residences must disclose policies, services, and rates on a standard disclosure and in resident agreements. The Uniform Consumer Disclosure describes the services provided, services that are not provided, public programs or benefits it accepts, policies that enhance or limit aging in place, and any physical plant features that enhance or limit aging in place. It also includes service packages, tiers and rates, and a statement that rates may change due to increased needs with an explanation of the situations that would lead to an increase.

A licensee who has specialized programs such as dementia care shall include a written statement of philosophy and mission and a description of how the assisted living residence can meet the specialized needs of residents. This must be included in the admission agreement and in the Uniform Consumer Disclosure.

Negotiated risk is a formal, mutually agreed upon, written understanding that results after balancing a resident's choices and capabilities with the possibility that those choices will place the resident at risk of harm. Negotiated risk does not constitute a waiver of liability. The Enhanced Residential Care Home Medicaid waiver for Level III and assisted living providers includes standards covering negotiated risk which is defined as "allowing residents choices in accepting certain risks. These choices are negotiated between the resident, case manager, provider, and family members with the intent of fostering independence, safety, and self-determination."

The resident agreement differs from other states with respect to service options and rates. Vermont's approach was informed by thinking of the resident unit as housing and considering the service option requirements of the Low Income Housing Tax Credit program. While purchase of services is optional, residences may set admission priorities based on applicants' need and intent to purchase services. Residents have the right to arrange for third-party services not available through the residence from a provider of their choice.

Charges for occupancy of the unit and utilities may vary by size of the unit and any amenities, or any published sliding fee scale or system of housing subsidies administered by the licensee. These housing charges may not vary based on the level of care that a resident needs. Providers may offer separate rental and service agreements. While providers have the option of offering less than full meal and snack plans, they must have the capacity to deliver a full plan to any resident who wishes to purchase it.

To promote aging in place at predictable costs, personal care services must be charged as a bundled daily, weekly, or monthly fee that may vary by service tiers. The bundled approach to services and fees draws on the framework that existed in Vermont residential care homes and public reimbursement programs prior to assisted living regulations. Differences among tiers must be clearly defined and measurable. Three tiers of service are required. The first tier is known as the Basic tier and it meets the needs of residents who have personal care needs below Vermont's nursing home level of care guidelines. (The Basic tier also corresponds to the level of care that Level III

residential care homes provide without a variance from the State.) Assisted living providers are required to define two tiers or bundles above the Basic tier that are within the mandatory scope of aging in place. Providers must define additional tiers or bundles beyond the three required if they have a policy of retaining residents above the mandatory scope of aging in place.

If providers use the lower two tiers of the Enhanced Residential Care Medicaid Waiver Program to define Tiers 2 and 3 required by the assisted living regulations, the tiers might be defined as follows:

- Tier 2--serving people with ADL scores of 6 to 18, who have no cognitive impairment or a mild cognitive impairment;
- Tier 3--serving people with a total ADL score over 18; a late loss ADL score of no more than 10 (late loss ADLs include eating, toileting, transferring, locomotion and bed mobility); a cognitive impairment, if any; no greater than moderate, behavioral needs, if any, that readily respond to intervention no more than 1.25 hours per week.

Retention policy and services available above the mandatory scope of care must be disclosed.

Providers have the option of offering an independent tier or bundle for residents who do not need personal care services. Vermont anticipates that this independent tier will be most commonly used by second occupants, such as spouses who do not require personal care but elect to use meals, activities, laundry, transportation, etc.

A residence may charge on a per service basis only for those services that are not required by regulations, such as additional transportation and housekeeping services, hair dressing, or outings that are not part of the program of activities and socialization available to all residents.

Residential care homes. Agreements are required prior to or at the time of admission that include: the daily, weekly, or monthly rate charged; the services covered in the rate; all other applicable financing issues including discharge or transfer when the resident's status changes from private pay to SSI or assisted community care services (ACCS); and how services will be provided. The agreement also covers transfer and discharge rights, the amount and purposes of any deposits, and refund policy. On admission the facility must determine if the resident has any form of advance directive and explain his or her right to formulate or not formulate a directive.

Resident agreements for Level III and assisted living providers who participate in the ACCS program must disclose the provider's policy about accepting SSI or ACCS payments. Decisions to accept SSI or ACCS payments may be made on a case-by-case basis. Additional items are included in the agreements with ACCS participants: ACCS services, room and board rate, personal needs allowance amount, and the provider's agreement to accept room and board and Medicaid as the sole payment.

Provisions for Serving People with Dementia

Residential care homes and assisted living residences. Special care units must be approved by the Department based on the following: statement of philosophy, definition of the categories of residents with dementia to be served, a description of the organizational structure, a description of the physical environment, criteria for admission, continued stay and discharge, unit staffing including qualifications, orientation, in-service education and specialized training, and medical management and credentialing.

Assisted living residences. Training in dementia care is required for all staff.

Medication Administration

Residential care homes and assisted living residences provide assistance with self-administration of medications and administer medications under the supervision of and the delegation by registered nurses. Each residence must have a policy on the procedures for delegation of administration, how medications will be obtained including choice of pharmacies, and documentation procedures. Trained staff must be designated to assist with or administer medications.

Public Financing

Residential care homes and assisted living residences are enrolled in one of three SSI living arrangements that apply:

Living Arrangement	G	F	C
Licenses	Level IV RCH (all) (Do not provide nursing overview--ineligible to become Medicaid providers)	Level III RCH & ALR that do not accept Medicaid/SSI (private pay facilities)	Level III RCH & ALR that do accept Medicaid/SSI (from at least some residents)

Medicaid reimburses through two separate programs: the Assistive Community Care Services (ACCS) program and the Enhanced Residential Care Home Waiver program (ERC). Level III RCHs and ALRs that enroll as Medicaid ACCS providers deliver a bundle of services including nursing overview, personal care, health, rehabilitative and supportive services for a standard per diem rate. The rate was increased to $30.25 a day July 1, 2004.

Eligible providers who apply for and are enrolled in the ERC Medicaid waiver program include Level III RCHs and ALRs. With respect to Level III RCHs, preference is given to providers that offer single occupancy units.

This waiver covers nursing overview (assessment, oversight, monitoring, and routine tasks), personal care services, case management, medication assistance, recreational

and social activities, support for individuals with cognitive impairments, and 24-hour, on-site supervision. Services must be provided in non-institutional, home-like settings.

Currently, the waiver is budgeted to serve up to 160 participants. In addition, local Medicaid waiver teams may direct up to 10 percent of a sister program's (Home Based Medicaid Waiver) slots to residents who choose to live in enhanced residential care and assisted living residences Participants must meet the nursing home eligibility criteria and be financially eligible for Medicaid under long-term care rules, and are awarded a slot in the program based on priority need.

For ERC reimbursement, the Department of Aging and Disabilities has designed a three-tiered system that was developed using the ERC assessment tool, review of other state reimbursement systems, and assessment data. Residents receive scores in five areas: ADLs, bladder and bowel control, cognitive and behavior status, medication administration, and special programs (behavior management, skin treatment, or rehabilitation/restorative care). Residents are assigned to a level (1 or 2) based on the extent of ADL impairments. Scores of 6 to 18 are assigned to Level 1 and scores between 19 and 29 are assigned to Level 2. The four remaining areas are rated and additional points are assigned. The payment tier is determined by combining the ADL level and the additional points. The rates are: Tier I ($42.00 a day); Tier II ($48.50 a day); and Tier III ($55.00 a day). In addition to the ERC reimbursement, providers receive an Assistive Community Care Services (ACCS) daily rate of $30.25 a day. Room and board is limited to an amount that corresponds to the Federal SSI benefit (currently $564 per month). The state supplement for personal needs is $47.76.

Medicaid Participation				
Program	2004		2002	
	Facilities	Participants	Facilities	Participants
ERC waiver	43	157	39	152
ACCS	85	487	73	468

Public Payments and Regulatory Service Levels					
	No Personal Care Needs (Independent)	Needs Below Nursing Home Guideline (Basic)	ERC Tier I (Often used as second ALR mandatory tier)	ERC Tier II (Often used as 3rd ALR mandatory tier)	ERC Tier III (Optional Service level for ALRs)
ACCS Medicaid State Plan	$0.00	$30.25	$30.25	$30.25	$30.25
ERC Medicaid Waiver	$0.00	$0.00	$42.00	$48.50	$55.00
Total	$0.00	$30.25	$72.25	$78.75	$85.25

Staffing

Residential care homes and assisted living residences are required to employ a manager or administrator who works in the facility an average of 32 hours per week

(including any time worked providing care or services, and including vacation and sick time).

Assisted living residences must employ sufficient staff to meet the needs of each resident. At least one personal care assistant must be on duty at all times. A registered nurse shall be employed to oversee implementation of service plans, conduct nursing assessments, and provide health services. The RN shall be on-site to the degree necessary to achieve the outcomes as specified in the individual service plans.

Residential care homes must have a sufficient number of qualified staff to meet resident needs.

Training

Residential care home administrators. Managers must complete a state approved certification course.

Assisted living residence administrators. The director must be at least 21 years old and have demonstrated experience in gerontology and supervisory and management skills. Directors shall have evidence of 15 hours of training per year regarding assisted living and its principles and the care of elderly and disabled individuals.

Residential care home staff. Staff must receive 20 hours of training each year that includes at least procedures in case of fire; resident rights; and mandatory reporting of abuse, neglect, and exploitation. Training in direct care skills may be provided by a nurse.

Assisted living residence staff. All staff must be trained in the philosophy and principles of assisted living. Staff serving residents with dementia must have training in communication skills specific to dementia.

Background Check

A criminal records and adult abuse registry check is required for directors and all staff. Staff with substantiated charges of abuse, neglect, or exploitation, or those convicted of an offense relating to bodily injury, theft, or misuse of funds or property or other crimes inimical to the public welfare may not be employed or retained.

Monitoring

Residential care homes and assisted living residences. The State works with RCHs and ALRs to help them comply with the regulations. The State conducts surveys at the time of application/license issuance and at least annually thereafter. The State will investigate complaints which merit investigation. The State issues notices of violation (of law or regulation), requires corrective action plans to be submitted and completed.

Sanctions may be levied. In necessary situations, the State will take "immediate enforcement action to eliminate a condition which can reasonably be expected to cause death or serious physical or mental harm to residents or staff." Enforcement actions may also include administrative (money) penalties, action against a license (suspension, revocation, modification or refusal to renew), suspension of admissions, and transfer of residents.

Monitoring is conducted by the licensing agency and the ombudsman program.

Assisted living residences. Facilities must have a quality improvement process that includes an internal committee of the director, an RN, a staff member, and a resident. The committee must meet at least quarterly. Resident satisfaction surveys must be conducted annually and be used by the committee.

Fees

Residential care homes and assisted living residences. No fee to apply for licensure.

Summary of ERC Program Tiers and Scoring System

Note: The ERC Program Tiers 1 and 2 would correspond to the second and third bundles/tiers required by the assisted living regulations to the extent they fall within the mandatory scope of care. Tier 3 of the ERC program would be included one or more tiers above the mandatory scope of care.

Points are assigned based on findings from a standardized assessment.

Payment Areas and Scoring System		
Area	**Maximum points**	**Factors**
ADLs	29	Eating, toileting, mobility, bathing, dressing
Continence	13	Bladder and bowel
Cognitive/behavior status	65	Sleep pattern, wandering, danger to self/others
Medication Administration	5	Administration
Special programs	49	Mood, behavior, cognitive loss. Skin: Turning/repositioning, nutrition or hydration, dressings, ulcer care, surgical wound care. Rehab: range of motion, skin brace assistance, transfer, walking, dressing/grooming, eating/ swallowing, prosthesis care, communication.

Vermont Rating System			
ADL Level 1		**ADL Level 2**	
ERC Tier	**Points**	**ERC Tier**	**Points**
1	0-30	1	0-35
2	31-59	2	36+
3	60+		

STATE RESIDENTIAL CARE AND ASSISTED LIVING POLICY: 2004

PDF Files Available for This Report

Cover, Table of Contents, and Acknowledgments
http://aspe.hhs.gov/daltcp/reports/04alcom.pdf

SECTION 1: Overview of Residential Care and Assisted Living Policy
http://aspe.hhs.gov/daltcp/reports/04alcom1.pdf

SECTION 2: Comparison of State Policies http://aspe.hhs.gov/daltcp/reports/04alcom2.pdf

SECTION 3: State Summaries http://aspe.hhs.gov/daltcp/reports/04alcom3.pdf

Also available: A complete list of sections and tables, with HTML and PDF links to each, is available at http://aspe.hhs.gov/daltcp/reports/04alcom.htm. This table of contents also includes links to Section 3 summaries, broken down by state.