MASSACHUSETTS

Citation Assisted living: 651 CMR 12.00 et seq.

General Approach and Recent Developments

Chapter 354 (Acts of 1994) created a certification process for assisted living facilities by the Executive Office of Elder Affairs. The law provides that the regulations "shall be sufficiently flexible to allow assisted living residences to adopt policies and methods of operation which enable residents to age-in-place." To be certified, residences must submit information such as the number of units and number of residents per unit, location of units, common spaces, and egress by floor; base fees to be charged; services to be offered and arrangement for delivering care; number of staff to be employed; and other information required by the Executive Office of Elder Affairs. The buildings are considered residential use for applying appropriate building codes.

Revisions to the regulations were final in December 2002. The State initiated a major review of the assisted living statute and regulations during summer 2004. The review will examine the experience in other states with particular attention to quality, the quality improvement process, and how quality can be woven into the regulations.

The Governor announced a new initiative, "Helping Our Massachusetts Elders" (HOME) that will provide alternatives to nursing home care. This new initiative creates an interagency task force of government agencies and establishes a $4 million trust fund as part of the state supplemental budget to support programs that allow elders to remain in home and community-based settings and supports a voluntary managed care program that emphasizes preventative care. Elder Affairs believes this new initiative will have a significant impact on assisted living and other residential alternatives in the State. The request for funding is pending.

Supply						
Category	**2004**		**2002**		**2000**	
	Facilities	**Units**	**Facilities**	**Units**	**Facilities**	**Units**
Assisted living residences	171	10,585	139	9,796	139	8,200

Definition

Assisted living residence is any entity, however organized, whether conducted for profit or not for profit, which meets all of the following criteria:

> Provides room and board; provides, directly by employees of the entity or through arrangements with another organization which the entity may or may not

control or own, assistance with activities of daily living for three or more adult residents who are not related by consanguinity of affinity to their care provider; and collects payments or third-party reimbursements from or on behalf of residents to pay for the provision of assistance with the activities of daily living.

Unit Requirements

Units must be single or double occupancy with lockable doors. New construction must provide for private baths. Existing buildings may qualify if they provide private half baths and one bathing facility for every three persons. All facilities must provide, at a minimum, either a kitchenette or access to cooking capacity for all living units. Cooking capacity is defined as each resident having access to a refrigerator, sink, and heating element. Facilities must comply with all federal and state laws and regulations regarding sanitation, fire safety, and access by persons with disabilities. The Secretary of Elder Affairs is authorized to waive the requirements for bathrooms and bathing facilities when determined to meet public necessity and to prevent undue economic hardship as long as the residence provides a home-like environment and promotes privacy, dignity, choice, individuality, and independence.

Admission/Retention Policy

The statute does not allow people needing 24-hour skilled nursing supervision to be admitted or retained in an assisted living residence. Facilities may admit and retain residents in need of skilled nursing care *only if* the care will be provided by a certified provider of ancillary health services or by a licensed hospice, *and* the provider does not train the residence staff to provide skilled nursing care.

To qualify for reimbursement under the Medicaid Group Adult Foster Care program, tenants must require daily assistance with at least one ADL and assistance with managing medications as documented by a physician and a nursing assessment; be at risk of requiring nursing home placement; be chronically disabled; and require 24-hour supervision.

Nursing Home Admission Policy

Individuals must need one skilled service daily from a specified list or have a medical or mental condition requiring a combination of at least three services including at least one nursing service. The nursing services that must be performed at least 3 days a week include: specified physician ordered skilled services; positioning while in bed or chair; measurement of intake or output based on medical necessity; administration of oral or injectable medications that require a registered nurse to monitor the dosage, frequency, or adverse reactions; staff intervention requirements for selected types of behavior

considered dependent or disruptive, unable to avoid simple dangers, wandering; physician ordered occupational, speech, or physical therapy; nursing observation and/or vital signs monitoring; or treatment involving prescription medication for uninfected post-operative or chronic conditions or routine dressing changes that require nursing care and monitoring. Two services may be required for assistance with bathing (direct care, attendance or constant supervision), dressing (direct care, attendance or constant supervision), toileting, bladder or bowel control for incontinence, scheduled assistance, or routine catheter/ostomy care, transfers, mobility/ambulation or eating.

Services

Chapter 354 requires that residences provide or arrange for opportunities for socialization and access to community resources; supervision or assistance with ADLs identified in a service plan (at a minimum residences must offer support for bathing, dressing, and ambulation); instrumental activities of daily living; self-administered medication management; timely assistance to urgent or emergency needs by 24-hour per day on-site staff, personal emergency response systems, or any additional response systems required by the Executive Office of Elder Affairs; up to three regularly scheduled meals per day (minimum of one meal per day). The administrator may arrange for the provision of ancillary health services in the residence but may not use residence staff for these services unless the staff is an employee of a certified provider of ancillary health services and/or an employee of a licensed hospice. Nursing services provided by a certified provider of ancillary health services such as injection of insulin or other drugs used routinely for maintenance therapy of a disease may be provided to residents.

Twenty-four hour nursing services are not allowed. Skilled services may only be provided by a certified home health agency on a part-time or intermittent basis. Medical conditions requiring services on a periodic, scheduled basis are also allowed. In addition, residents may “engage or contract with any licensed health care professional and providers to obtain necessary health care services…to the same extent available to persons residing in private homes.”

All residents must have an individual services plan that is developed prior to admission and reviewed/reassessed at least every 6 months or when health status or family circumstances change. The plan is based on information from the resident, family members and the physician, including diagnosis, medications, allergies and dietary needs. It includes the services needed based on physical, cognitive, and social needs and behavioral concerns as well how the residence will provide for 24-hour staffing. If provided by the residence, the plan describes the type of assistance with medication that will be provided.

Dietary

A minimum of one meal a day must be provided (facilities may provide three meals a day). Menus for assisted living residences should meet the current Dietary Reference Intake (DRI) established by the Food and Nutrition Board, Institute of Medicine, National Academy of Sciences (NAS), and the Dietary Guidelines for Americans (DG) published by the Secretaries of Health and Human Services and Agriculture. At a minimum, these dietary plans must allow a resident to adhere to sodium-restricted, sugar-restricted, and low-fat diets. The residence's menus or meal plans shall be evaluated at least every 6 months by a qualified dietician. Residences must disclose to residents and prospective residents the types of special diets they can accommodate and any additional costs associated with providing this service as well as limitations on addressing food allergies. Dietary needs must be reviewed every 6 months and included in the resident service plan. The residence is not responsible for ensuring that the resident follows the diet plan but must provide enough food choices and information so that the resident can adhere to the diet if he or she chooses.

Staff managing dietary services must complete a food service sanitation certification course. Therapeutic diets must be reviewed by a qualified dietician and evaluated every 6 months unless otherwise specified by a physician.

Agreements

Resident agreements include: charges, expenses, and other assessments for resident services; personal care services; lodging and meals; resident's agreement to make payment; arrangements for payment; grievance procedure and the right to contact the ombudsman; sponsor's covenant to comply with applicable federal and state laws; provisions for terminating the agreement; reasonable rules for staff, management, and resident behavior; and a copy of the residents rights. Additionally, it must include the specific unit number in which the resident will reside; a signature of parties, term of agreement; liability (the residence may not require a resident to maintain liability insurance); a right to privacy; and a right to contract with outside providers.

A Disclosure of Rights and Services (disclosure statement) shall be delivered to a prospective resident at the time of or prior to the execution of the residency agreement, or at the time of or prior to the transfer of any money to a sponsor by or on behalf of a prospective resident. The disclosure statement is required to be issued only once, and is required to be delivered as an independent document. Included in this disclosure is the grievance procedure; an explanation of any limitations on services; a description of the role of the nurse; policy concerning self-administration and limited administration of medications; rules of conduct for staff, management and residents; provisions of the resident agreements; and nursing and personal care worker staffing levels by shift.

Provisions for Serving People with Dementia

The service plan includes how the specialized needs of resident with dementia shall be addressed, including the provision of 24-hour awake staff. The staff orientation program includes training in dementia and cognitive impairment. New rules require that 1 hour of ongoing training annually cover dementia/cognitive impairment topics.

Medication Administration

When assisting a resident to self-administer medication the individual performing self-administered medication management (SAMM) *must*:

- Remind resident to take medication;
- Check the package to ensure that the name on the package is that of the resident;
- Observe the resident while they take the medication; and
- Document in writing the observation of the resident's actions regarding the medication.

The individual performing SAMM may open prepackaged medications and/or opened bottles, read the name of the medications and directions to the resident and respond to questions the resident may have concerning the directions on the label. The residence may assist a resident with SAMM from a medication container that has been removed from its original pharmacy-labeled packaging or container by another person, however if this service is performed, full written disclosure of the risks involved and consent by the resident or legal representative shall be provided. SAMM shall only be performed by an individual who has completed personal care service training. Central storage of resident medications (the storage of medication in an area outside of the resident's unit) is prohibited in an assisted living residence.

Limited Medication Administration (LMA) is an optional service. Assisted living residences must disclose the availability of this service and the cost in the residency agreement and/or Disclosure of Rights and Services. Limited Medication Administration may only be provided in assisted living residences by a family member or by a practitioner or a nurse registered or licensed under state law. Nurses may administer non-injectible medications to residents. Limited medication administration requires detailed documentation including the resident's service plan. All medication must be kept in the resident's unit.

Public Financing

Services for eligible low-income tenants in residences that contract with Medicaid are subsidized through the Group Adult Foster Care (GAFC) program. GAFC is a service

available under the "state plan" rather than a Medicaid waiver. The program serves adults over age 22 who have a physician's authorization confirming they are at risk of entering an institution. Participants must have at least one ADL impairment. GAFC is available in assisted living residences and conventional elderly housing.

GAFC provides an average of $37.75 per day for services and administrative costs. Participants receive assistance with ADLs and IADL; a multidisciplinary care team; access to 24-hour scheduled and unscheduled care; and minimum professional staffing of 3.5 hours per week per resident. The rate assumes participants receive one hour of personal care a day. In addition to GAFC services, participants may also receive up to 2 days of adult day health services or 8 hours of home health aide services with prior approval.

To support low-income residents who do not have sufficient income to pay for room and board, the State has created a special SSI living arrangement for assisted living residences. The SSI payment standard is $1,018 a month for a single individual. In January 2003, the program contracted with 141 GAFC providers and served 3,110. Of this number, 101 providers were assisted living residences and they served 1,120 residents.

Medicaid Participation					
2004		2002		2000	
Facilities	Participation	Facilities	Participation	Facilities	Participation
101	1,120	44	922	74	547

Staffing

No staffing specific guidelines are included concerning the type and number of staff. However, the residence must maintain an ability to provide timely assistance to residents and to respond to urgent or emergency needs through on-site staffing, personal emergency response, or other means.

Training

Administrators. The manager of an assisted living residence must be at least 21 years old and have demonstrated administrative experience. The manager must have a Bachelor's degree or equivalent experience in human services management, housing management, and/or nursing home management. The service coordinator of a residence must have a minimum of 2 years of experience working with elders or disabled individuals and a Bachelor's degree or equivalent experience.

Staff. Prior to active employment, all staff and contracted workers having direct contact with residents and all food service personnel must receive a 7-hour (up from six) orientation covering the following topics:

- Philosophy of independent living in an ALR;
- Resident bill of rights;
- Elder abuse, neglect, and financial exploitation;
- Communicable diseases;
- Communication skills;
- Review of the aging process;
- Dementia/cognitive impairment including a basic overview of the disease process, communication skills, and behavior management;
- Resident health and related problems;
- Job requirements;
- Self-administered medication management; and
- Sanitation and food safety.

The ongoing training requirement was raised from 5 to 10 hours per year for all employees.

All employees and providers shall receive ongoing in-service education and on-the-job training aimed at reinforcing the initial training. ALR staff and contracted providers of personal care services must complete an additional 54 hours of training prior to providing personal care services to a resident (34 hours general training and 20 hours of training specific to the provision of personal care). The 20 hours of personal care training must be conducted by a qualified registered nurse with a valid Massachusetts license. The 54 hours of training include, but are not limited to, the following topics:

- Personal hygiene;
- Self-administration of medications;
- Elimination;
- Nutrition;
- Human growth and development;
- Family dynamics;
- Grief, loss, death and dying;
- Mobility;
- Maintenance of a clean, safe, and healthy environment;
- Home safety; and
- Assistance with appliances.

Background Check

Applicants must assure that none of its officers, directors, trustees, limited partners, or shareholders has ever been found in violation of any local, state, or federal statute, regulation, ordinance, or other law by reasons of the individual's relationship to an assisted living residence.

No person working in an assisted living residence may have been convicted of a felony.

Monitoring

The Executive Office of Elder Affairs conducts compliance reviews of assisted living residences every two years. The reviews include inspections of the common areas, living quarters (by consent of the resident), inspection of the service plans, and a review of the resident satisfaction survey. Compliance reviews may be initiated at any time with probable cause.

The State sees their oversight process as consultative. This is not applied uniformly, however. This process is more a result of assisted living residences contacting the State for assistance.

During a compliance review, state staff will address issues of concern during a debriefing meeting with the administrator. The State will write a letter with the findings from the review and a request for a corrective action plan. Most frequently this relates to rewriting a policy or retraining staff. Medication issues are also common. The assisted living residence must submit documentation that corrective actions have occurred. If the State determines that the compliance review requires more intensive action (severity of problem, number of residents affected, willingness of assisted living residence to address problem) they will do a follow-up visit. In many cases, the State is citing the same issues on repeat visits or compliance reviews.

The State ombudsman program may require other corrective action and become more involved at the resident level.

Fees

Fees are set by the Secretary of Administration and Finance based on the number of units. The current application fee is $200. Residences pay a certification of $125 per unit every 2 years.

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.