

NEW YORK

Citation Adult care facilities, NY Social Service Law (SSL) Article 7, Title 2
Adult homes, 18 NY Codes Rules & Regulations Part 487
Enriched housing programs, 18 NYCRR Part 488
Residences for adults, 18 NYCRR Part 490
Assisted living program, NY SSL §461-1.; 18 NYCRR Part 494

General Approach and Recent Developments

The State approaches assisted living as a service option within certain existing adult care facilities. “Assisted Living Programs” (ALPs) must be dually-certified as an adult home or enriched housing program (the housing component) and either a home care services agency, a certified home health agency, or a long-term home health care agency (the service component).

Adult homes and enriched housing programs are both certified under the State's adult care facility regulations. Both models serve five or more people and provide long-term residential care, room, board, housekeeping, personal care, and supervision. Adult homes represent the State's board-and-care model while enriched housing programs operate in community integrated settings resembling independent housing units. State statute authorizes the Medicaid program to contract for 4,200 ALP beds, most of which have been allocated. While the majority of ALP beds are in adult homes, the demand from “enriched housing” providers is increasing among purpose built facilities rather than conventional elderly housing sites.

In August 2004, the legislature passed the “assisted living reform” act, S7748, which creates a clear and flexible statutory structure, defines assisted living residence, requires a written residency agreement that contains consumer protections, enunciates and protects resident rights and provides adequate and accurate information to consumers. Assisted living residences must also hold a license as an adult care home or an enriched housing program. A ten member task force will be established by December 1, 2004 to develop regulations implementing the new law.

Recommendations from a workgroup formed to discuss policy, program and financing reforms for adult care facilities were submitted to the Commissioner of Health in October 2002. Regulations based on the recommendations were issued in 2004.

Several new State initiatives supported by the Governor are currently being implemented. These initiatives to improve the lives of adult home residents include clinical, psychiatric and functional assessments by highly qualified and trained health and mental health care providers; improved case management and coordination to assure that appropriate care and services are delivered; enhanced medication

management system which better ensures that medication is being administered by qualified personnel; improved social and recreational services; and increased advocacy and legal support.

Category	Supply					
	2004		2002		2000	
	Facilities	Units	Facilities	Units	Facilities	Units
Adult care homes	431	32,859	449	34,805	453	33,589
Enriched housing program	90	7,227	83	5,308	44	3,147
Residences for adults	6	200	8	345	8	464

Definition

Assisted living and assisted living residence (S 7748) means an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services in a home-like setting to five or more adults residents unrelated to the assisted living provider. An applicant...must also provide daily food service, twenty-four hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. An operator shall provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status.

Enhanced assisted living certificate (S7748) means a certificate...which authorizes a residence to provide aging-in-place by retaining residents who are chronically chairfast and unable to transfer without the physical assistance of another person; chronically require physical assistance to walk, climb or descend stairs; are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or have chronic unmanaged urinary or bowel incontinence.

Adult care facilities (ACFs) are generally viewed as personal care settings for persons with functional impairments occasioned by age or by physical or cognitive disability. While there are by statute five different types of ACFs, the Department of Health has oversight authority for three: adult homes, enriched housing programs, and residences for adults. The other two types, shelters for adults and family-type homes, are overseen by the State Office of Temporary and Disability Assistance (OTDA) and the Office of Children and Family Services (OCFS), respectively.

An *adult home* is established and operated for the purpose of providing long-term residential care, room, board (three meals and a nutritious snack per day), housekeeping, personal care, and supervision to five or more adults unrelated to the operator. While adult homes serve persons at least 18 years of age, most residents are much older than 18. These are congregate settings in that they can accommodate large numbers of residents in one building--up to 200 residents in one facility (some

“grandfathered” facilities accommodate more), typically with one or two residents to a bedroom. Adult homes may be proprietary, public, or non-profit.

An *enriched housing program* means an adult care facility established and operated for the purpose of providing long-term residential care to five or more adults, primarily persons 65 years of age or older (no more than 25 percent under 65 and all are 55 or older), in community integrated settings resembling independent housing units. Most programs are located in individual apartment settings that have kitchens and private bathrooms. Services provided are the same as those in adult homes, with the exception of supervision and personal care. An enriched housing operator is required to provide only one meal a day, which must be a hot congregate meal, and the operator must assure that there is sufficient food available in each resident’s apartment for the other two meals.

Residences for adults serve a population that is younger than that served by adult homes and enriched housing programs and generally needs a different array of services, including mental health services provided under the auspices of the Office of Mental Health (OMH). Services that must be provided by the operator of the residence include room, meals, housekeeping, case management and 24 hour-a-day supervision. Operators are not required to provide personal care. While most resident rooms are single, some are double-occupancy. Bathrooms may be shared and there is a communal dining room for meals.

Assisted Living Program (ALP) (Medicaid program) is available in some adult home and enriched housing programs, and combines residential and home care services. It is designed for individuals who may otherwise require nursing home placement for what are primarily social rather than medical reasons. The operator of the ALP is responsible for providing or arranging for resident services that must include room, board, housekeeping, supervision, personal care, case management, and home health services. While the ALP is primarily a Medicaid-funded program, some non-Medicaid ALP beds do exist.

Unit Requirements

Adult homes provide single or double occupancy bedrooms and have one toilet and lavatory for every six residents and one tub/shower for every ten residents.

Enriched housing programs must provide single occupancy units, unless shared by agreement, and each unit must include a full bathroom, living and dining space, sleeping area, and equipment for storing and preparing food. Shared units must provide for toilets, lavatory, shower, or tub shared by not more than three residents.

Residences for adults provide single or double occupancy bedrooms, with shared bathrooms and communal dining rooms.

Assisted living programs comply with the relevant requirements under which the contracting facility is licensed (i.e., adult home or enriched housing program).

Admission/Retention Policy

Adult care facility (ACF) operators may not accept or retain anyone who: requires continual nursing or medical care; suffers from a serious and persistent mental disability sufficient to warrant placement in an acute care or residential treatment facility; is a danger to self or others; requires continual skilled observation; refuses or is unable to comply with treatment; is chronically bedfast or chairfast and requires assistance from another person to transfer; regularly needs assistance from another person to walk or climb and descend stairs; has chronic un-managed urinary or bowel incontinence; has a communicable disease; is dependent on medical equipment (with exceptions); has chronic personal care needs which cannot be met by the staff; is not self-directing; and engages in drug or alcohol use which results in aggressive or destructive behavior.

Assisted Living Program (ALP) To receive Medicaid reimbursement for home care services provided in an ALP, applicants must be determined by a physician to be appropriate for this level of care. Following a review of the assessments, prior authorization must be completed by the fiscally responsible social services district. The social service district may, at their discretion, choose to conduct their own assessment prior to authorizing Medicaid payment. The applicant must then be assessed by the ALP to determine the care required and the program's ability to meet those needs. Participants must have stable medical conditions and be able to assure self-preservation in an emergency.

Assisted living S 7748 allows facilities to apply for an “enhanced assisted living certificate” to support aging in place for residents who are chronically chairfast, unable to walk or climb stairs without physical assistance; depend on medical equipment and require more than intermittent or occasional assistance; or have chronic unmanaged urinary or bowel incontinence.

Services

Adult care facilities can provide supervision, personal care, housekeeping, case management, activities, food service, assistance with medication, and activities under their certificate of operation. To operate as an assisted living program, additional services and licenses are needed. The facility may seek a license to provide nursing care and therapies, or it may contract with a home health agency or a long-term home health care program. A care plan is jointly developed by the ALP and the Certified Home Health Agency/Long Term Home Health Care Program which is based on the physician's orders and the assessment process.

The Medicaid ALP capitation rate covers personal care, home health aide, personal emergency response services, nursing services, physical therapy, occupational therapy, speech therapy, medical supplies that do not require prior authorization, and adult day health care, if needed. A Medicaid recipient's ALP services must not be discontinued solely because the costs of the recipient's care exceed the amount of the capitated payment rate. The ALP must provide case management services to Medicaid recipients who are receiving assisted living program services. The assisted living program must comply with the case management requirements which include receiving referrals for ALP services and providing information about such services; referring an ALP applicant who the program reasonably expects may be eligible for Medicaid to the social services district in which the program is located for a Medicaid eligibility determination; establishing linkages to services provided by other community agencies, providing information about these services to Medicaid recipients; and establishing criteria for referring Medicaid recipients to these services, to the maximum extent possible; achieving economic efficiencies, including, but not limited to using, shared aides consistent with the ALP's staffing standards, and arranging for the reduction or discontinuance of a Medicaid recipient's services when the ALP reassesses the recipient and determines that the recipient's ALP services must be reduced or discontinued.

All services must be provided in accordance with the recipient's plan of care based upon the recipient's initial assessment and periodic reassessments. When a reassessment indicates that assisted living program services are no longer appropriate, services must continue to be provided in accordance with the recipient's plan of care based upon the recipient's prior assessment until alternative placement arrangements can be made.

Dietary

Adult homes and residences for adults must provide, at a minimum, three meals a day, served at regularly scheduled times, and a nutritious evening snack. The operator shall provide meals which are balanced, nutritious and adequate in amount and content to meet the daily dietary needs of residents.

Enriched housing programs (EHPs) must serve, at a minimum, one hot mid-day or evening meal a day that meets one-third of the recommended dietary allowances of the Food and Nutrition Board. EHPs must also assure that residents receive sufficient food for all non-congregate meals and snacks.

Agreements

Adult care facility admission agreements cover the due dates for payment; list of services, material, equipment, and food required by law or regulation to be provided; the basic monthly, weekly, or daily payment; a detailed schedule of other services,

materials, equipment, or food the operator agrees to make available; a guarantee that charges for supplemental services that are made at the resident's request; conditions for adjusting the rate; the actual rate charged by the operator and accepted by the resident; an offer to manage funds received by SSI or Home Relief residents; a statement that the operator will comply with SSI/Home Relief requirements; charges for temporary absences; conditions of termination; refund policy; statement that the resident will provide a signed medical statement and inform the operator of changes in health conditions, status, or medications; and a statement that the resident will comply with all reasonable rules.

S 7748 requires name, address, phone number of the residence, the owner and operator; the licensing status of the residence; providers of service; the period of the agreement; the services to be provided and the base rate; additional services available for a fee; a rate or fee schedule; process for changing the agreement; the complain resolution process; the name of the resident's legal representative and their responsibilities; admission/retention criteria; procedures for terminating the contract, discharge and transfer; billing and payment requirements; procedure for non-payment of fees; and refund policy.

In addition to the agreement, the residence must provide a consumer information guide developed by the Department; a statement about the residence's license and additional certificates; ownership interest in excess of 10% of any entity that provides equipment or services; a statement that the resident is able to obtain services from providers with whom the operator does not have an agreement and their right to choose health care providers; a statement about the availability of public funds; and the availability of the ombudsman.

Provisions for Serving People with Dementia

Facilities may not operate dementia units without written authorization from the Department of Health. In order to obtain written authorization, the operator must submit a complete program proposal and a description of the impact that the program will have on other residents and programs. Approval of the dementia program will be based on: the quality of the proposal; the proposal's anticipated impact on other residents and programs, if currently certified beds are to be used; site visits if needed to verify compliance; and the demonstrated ability of the facility to provide a consistently high level of care and services to residents.

S 7748 requires that facilities serving people with special needs must submit a special needs plan to the Department that describes the specialized services, staffing levels, staff education and training, work experience, professional affiliations or special characteristics related to the population served, and environmental modifications planned or made. The Department will set standards to ensure adequate staffing and training.

Medication Administration

Assistance with self-administration of medication is allowed, including 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.

Public Financing

Many adult care facility residents pay for room and board through a state supplement to the Federal SSI program. ACF rates for SSI recipients are established in state statute and cover room, board and other required services. Additional support services for SSI-eligible residents, such as personal and home health care, and mental health and medical care, are reimbursed through Medicaid.

Services in Assisted Living Programs are covered under the Medicaid state plan and the SSI state supplement. The Medicaid program will not make payments for ALP services provided to a Medicaid recipient while the recipient is receiving residential health care facility services or in-patient hospital services.

The home care service reimbursement (see attached chart) is based on 50 percent of the resident's Resource Utilization Group (RUG) which would have been paid in a nursing home. The State has created 16 RUG categories for ten geographic areas of the State. Facilities must comply with the adult home retention criteria. However, the full array of rates is shown since facilities receive a higher rate when a resident deteriorates and is retained until a nursing home placement can be made.

The reimbursement category is determined through a joint assessment by the Assisted Living Program and the designated home health agency or long-term home health care program. The assessment and the RUG category are reviewed by the Department of Social Services district office which grants prior authorization of the Medicaid home care payment.

The Medicaid rates do not include room and board. For residents who qualify, residential services (room, board, and some personal care) are covered by SSI which also varies by region. In 2004, the SSI state supplement standards were \$999 in New York City, Nassau, Suffolk, and Westchester counties and \$969 in the rest of the State. Beneficiaries retain a personal needs allowance of \$127.

Medicaid Participation					
2004		2002		2000	
Facilities	Participants	Facilities	Participants	Facilities	Participants
57	3,315	53	3,034	45	2,522

Staffing

Adult care facilities must have a case manager and staffing that is sufficient to provide the care needed by residents.

Training

Administrators. Program coordinators must be 21 years or older, have a master's degree in social work and one year's experience, or a bachelor's degree and three years of acceptable experience.

Staff providing personal care must complete a personal care aide or home health aide training course or other examination approved by the State Department of Health. Adult care facilities must provide an orientation and in-service training in the characteristics and needs of the population served, resident rights, program rules and regulations, duties and responsibilities of all staff, general and specific responsibilities of the individual being trained, and emergency procedures.

Background Check

Criminal background checks are not currently required of operators of adult care facilities, nor of the staff within those facilities.

Monitoring

Adult Homes. In October 2002, the State implemented new policies regarding the oversight of adult homes. These new policies include: reinforcement of mandatory death reporting by homes and immediate investigations of such reports; multi-agency created profile of deaths at the homes to identify patterns; and increased surveillance, including multi-agency teams comprised of inspectors from Department of Health, Office of Mental Health and Commission on Quality of Care to complete focused surveys. These strong actions serve to further protect adult home residents and serve to make homes more accountable for the care they provide.

Adult care facilities. Inspection and supervision of adult care facilities shall be undertaken by the Department to ascertain whether all applicable provisions of law and regulations are being complied with. The Department may undertake enforcement action against any operator of an adult care facility who fails to operate the facility in compliance with applicable provisions of law and regulation.

Survey reports have to specify corrective action, and surveyors sometimes get into discussions with operators regarding ideas for corrective action. The State does offer training to operators and select staff, and will be offering training in 2004 regarding medication management in ACFs. The State issues "Dear Administrator Letters" (DALs). Since 2002, the State has issued DALs covering the following topics: reporting of deaths, attempted suicides and felony crimes; notice of regulation (failure in systemic practices and procedures); maintenance of safe and comfortable temperature levels within ACFs (Winter AND Summer); influenza prevention and control; establishment of ACF complaint "hotline"; Emergency Preparedness Guidelines; statistical report requirement; case management obligations; facility access by individuals who are not residents; sprinkler head recall; waiver request/equivalency notification; guidelines for dementia units; availability of free or low-cost resources to residents; and notice of law (Long-Term Care Resident and Employee Immunization Act).

Fees

S 7748 sets a biennial fee of \$500 plus \$50 per residents whose annual income is above 400% of the federal poverty level.

2003 Medicaid Regional RUG Rates for Assisted Living Programs in New York

RUG II CAT.	Albany	NYC	Syracuse	Rochester	Orange	Long Island	Erie	Westchester	Utica	Poughkeepsie	Binghamton	Elimira	Central Rural	Western Rural	Glens Falls	Northern Rural
CA	\$53.70	\$76.82	\$57.53	\$54.25	\$58.50	\$71.28	\$50.14	\$67.12	\$50.13	\$54.67	\$51.06	\$53.67	\$49.81	\$46.61	\$50.61	\$46.19
BA	\$53.29	\$76.34	\$57.13	\$53.77	\$58.06	\$70.82	\$49.76	\$66.59	\$49.81	\$54.22	\$50.69	\$53.37	\$49.44	\$46.26	\$50.28	\$45.92
PA	\$45.43	\$64.02	\$48.96	\$46.09	\$49.26	\$59.28	\$42.55	\$56.40	\$42.68	\$46.37	\$43.55	\$45.49	\$42.75	\$39.71	\$42.96	\$39.05
PB	\$57.68	\$83.46	\$61.78	\$58.02	\$62.89	\$77.50	\$53.72	\$72.41	\$53.71	\$58.69	\$54.74	\$57.65	\$53.23	\$49.82	\$54.42	\$49.68
RA	\$81.26	\$120.38	\$86.40	\$81.25	\$89.14	\$112.10	\$75.24	\$103.18	\$74.87	\$82.49	\$76.27	\$80.84	\$73.46	\$69.33	\$76.37	\$69.93
RB	\$88.20	\$131.55	\$93.76	\$88.06	\$96.79	\$122.58	\$81.53	\$112.39	\$81.06	\$89.60	\$82.68	\$87.57	\$79.49	\$74.98	\$82.91	\$75.85
SA	\$79.39	\$117.48	\$84.50	\$79.48	\$87.02	\$109.38	\$73.53	\$100.84	\$73.14	\$80.71	\$74.60	\$78.87	\$71.94	\$67.76	\$74.64	\$68.23
SB	\$87.03	\$128.65	\$92.29	\$87.25	\$95.57	\$119.85	\$80.58	\$110.63	\$79.96	\$88.43	\$81.50	\$86.23	\$78.46	\$74.24	\$81.54	\$74.65
CB	\$68.78	\$101.05	\$73.46	\$68.94	\$75.21	\$94.00	\$63.82	\$87.01	\$63.65	\$69.95	\$64.92	\$68.52	\$62.81	\$58.94	\$64.81	\$59.19
CC	\$73.19	\$108.03	\$78.06	\$73.23	\$80.12	\$100.54	\$67.85	\$92.74	\$67.64	\$74.37	\$68.93	\$72.93	\$66.56	\$62.59	\$68.94	\$63.04
CD	\$83.44	\$124.04	\$88.79	\$83.38	\$91.51	\$115.54	\$77.19	\$106.17	\$76.79	\$84.79	\$78.32	\$82.89	\$75.40	\$71.06	\$78.46	\$71.76
BB	\$63.94	\$93.54	\$68.39	\$64.10	\$69.83	\$86.96	\$59.41	\$80.64	\$59.35	\$65.00	\$60.48	\$63.87	\$58.61	\$54.94	\$60.32	\$55.11
BC	\$70.92	\$104.66	\$75.75	\$70.97	\$77.56	\$97.38	\$65.74	\$89.87	\$65.57	\$72.12	\$66.90	\$70.64	\$64.67	\$60.64	\$66.86	\$61.05
PC	\$63.94	\$93.54	\$68.39	\$64.10	\$69.83	\$86.96	\$59.41	\$80.64	\$59.35	\$65.00	\$60.48	\$63.87	\$58.61	\$54.94	\$60.32	\$55.11
PD	\$68.37	\$100.60	\$73.07	\$68.47	\$74.76	\$93.57	\$63.44	\$86.48	\$63.32	\$69.52	\$64.56	\$68.20	\$62.45	\$58.58	\$64.49	\$58.91
PE	\$75.93	\$112.83	\$81.10	\$75.87	\$83.08	\$105.04	\$70.27	\$96.54	\$70.04	\$77.25	\$71.54	\$75.52	\$69.03	\$64.70	\$71.61	\$65.33

CA = CLINICALLY COMPLEX A	CB = CLINICALLY COMPLEX B
BA = SEVERE BEHAVIORAL A	CC = CLINICALLY COMPLEX C
PA = REDUCED PHYSICAL FUNCTIONING A	CD = CLINICALLY COMPLEX D
PB = REDUCED PHYSICAL FUNCTIONING B	BB = SEVERE BEHAVIORAL B
RA = HEAVY REHABILITATION A	BC = SEVERE BEHAVIORAL C
RB = HEAVY REHABILITATION B	PC = REDUCED PHYSICAL FUNCTIONING C
SA = SPECIAL CARE A	PD = REDUCED PHYSICAL FUNCTIONING D
SB = SPECIAL CARE B	PE = REDUCED PHYSICAL FUNCTIONING E

NOTE: The rates above are based on 50 percent of the nursing home rate.

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>

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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.