

TEXAS

Citation Assisted living facilities: Texas Revised Health and Safety Statutes Annotated §247.001 et. seq.; Texas Administrative Code Title 40, Chapter 92 et seq; Title 40 §46.13; and §48.6003; §19.2409

General Approach and Recent Developments

Rules were updated in 2007. Legislation providing for two year licenses and raising the maximum licensing fee passed in 2007. Legislation passed in 2005 that restricts the use of restraints and seclusion in multiple-settings including assisted living and allows accreditation surveys conducted by JCAHO and CARF to substitute for an annual survey under specified conditions. Further changes to the regulations are expected to be final in the summer of 2008. The purpose of the regulations states that assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

The state licenses several types of ALFs. Regulations were revised in 2002 and 2003. Further changes were proposed in 2004 adding definitions and authorizing electronic monitoring, setting an administrative penalty schedule, and requiring central air conditioning in new facilities. Only licensed facilities may use the term assisted living, and the statute requires careful monitoring to detect and report unlicensed facilities.

Assisted living/residential care services are covered by the state's Medicaid HCBS waiver program in licensed ALFs. Settings must be licensed as ALFs and may contract with Medicaid under three models: assisted living apartments, residential care apartments, and residential care non-apartments.

Adult Foster Care

Separate rules apply to AFC facilities that serve up to four residents.

Web Address	Content
http://info.sos.state.tx.us/pls/pub/readtac\$ext.ViewTAC?tac_view=4&ti=40&pt=1&ch=92	Rules
http://www.dads.state.tx.us/handbooks/ls-alf/	Rules
http://www.dads.state.tx.us/business/LTC-Policy/forms/index.html	Provider, disclosure
http://facilityquality.dhs.state.tx.us/ltcqs_public/nq1/jsp2/qrsHome1en.jsp?MODE=P&LANGCD=en	List, survey results

Category	Supply					
	2007		2004		2002	
	Facilities	Units	Facilities	Units	Facilities	Units
Assisted living facilities	1,433	45,853	1,378	42,245	1,324	41,424

Definition

Assisted living facility is an establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment, and provides personal care services.

Facilities for persons with Alzheimer's disease. Facilities that advertise, market, or otherwise promote their capacity to provide personal care services for people with Alzheimer's disease must be certified as a Type B facility.

Facilities for supervision of medication and general welfare is a separate category of assisted living that provides only medication supervision.

The rules license the following types of ALFs:

- Type A home residents are capable of evacuating the facility unassisted, do not require routine attendance during night-time hours, and are capable of following directions under emergency conditions.
- Type B facility residents may require staff assistance to evacuate, may not be able to follow directions, require attendance during the night, and while not permanently bedfast, may require assistance in transferring to and from a wheelchair.
- Type C facilities are four-bed AFC facilities.
- Type E facilities serve residents who are capable of self-evacuation and may provide general supervision and medication supervision but not assistance with ADLs.

Medicaid. Assisted living/residential care services provide a 24-hour living arrangement for persons who, because of a physical or mental limitation, are unable to continue independent functioning in their homes. Services are provided in ALFs licensed by the Texas Department of Human Services. In effect, the rules recognize three types of units provided in licensed ALFs. Community-Based Alternatives (CBA) waiver participants are responsible for their room and board costs and, if applicable, a co-payment for assisted living/residential care services.

Unit Requirements

Rules require 80 square feet for single bedrooms and 60 square feet per bed for multiple occupancy rooms in Type A facilities and 100 square feet and 80 square feet respectively in Type B facilities. A maximum of four people may share a room. Units with separate living/dining and bedroom space may include 10% of the required bedroom space as living area. Not more than 50% of the beds may be in rooms of three or more. Bathrooms, including bathing units, are required for every six residents.

The Medicaid program guidelines distinguish among assisted living apartments, residential care apartments, and residential care non-apartments. Assisted living apartments must provide each participant a separate living unit to guarantee his or her privacy, dignity, and independence. Units must include individual living and sleeping areas, a kitchen, bathroom, and adequate storage. Units must provide 220 square feet, excluding bath, but units in remodeled buildings may provide 160 square feet. Double occupancy units may be provided if requested.

Residential care apartments must be double occupancy with a connected bedroom, kitchen, and bathroom area providing a minimum of 350 square feet per client. Indoor common space used by residents may be counted in the square footage requirement. Kitchens must be equipped with a sink, refrigerator, cooking appliance (i.e., stove, microwave, built-in surface unit) that can be removed or disconnected, and space for food preparation.

A residential care non-apartment means a licensed ALF which does not meet either of the above definitions. These units may be double occupancy units in free-standing buildings that have 16 or fewer beds.

Admission/Retention Policy

Type A facility residents must be capable of evacuating without assistance; do not require routine attendance during nighttime hours; and are capable of following directions.

Type B facility residents may require staff assistance to evacuate; be incapable of following directions; require attendance during nighttime hours; and may not be permanently bedfast but can require assistance with transfer.

Facilities may not admit or retain residents whose needs cannot be met by the facility, or residents requiring services from the facility's RN on a daily or regular basis (exceptions are made for residents with terminal conditions or for short-term needs).

Type A and B facilities may request a waiver for residents who do not meet the retention standards if there is a physician assessment stating the resident is appropriately placed and a statement from the resident that they wish to remain in the facility.

Nursing Home Admission Policy

To be eligible for the CBA Program or nursing facility care, a client must require licensed nursing care (RN or licensed vocational nurse) or meet two or more of the criteria for nursing home risk as follows:

- Needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;
- Has had a functional decline in the past 90 days;

- Has a history of a fall two or more times in the past 180 days;
- Has a neurological diagnosis of Alzheimer's, head trauma, Multiple Sclerosis, Parkinsonism, or dementia;
- Has a history of nursing facility placement within the last five years;
- Has multiple episodes of urine incontinence daily; and
- Goes out of one's residence one or fewer days a week.

Services

An ALF provides home management tasks (i.e., housekeeping, changing bed linens, laundry, shopping); transportation and escort service to medical appointments, shopping, and recreation activities; 24-hour supervision; social and recreational activities; and room and meals. Activities and social programs must be available at least weekly.

An assessment that includes information on listed areas must be completed within 14 days of admission. Rules allow licensed staff to administer medications and provide occasional treatment which enables residents to maintain independence. Residents may contract to have home health services provided.

Services that can be provided through a waiver include 24-hour supervision, personal care, administration of medications, congregate meals, and social and recreational activities. Nursing services must be provided through contracts with certified home health agencies.

Dietary

Meal services include planning, cooking, and serving three meals a day that are essential to the client's health and well-being. Meals must supply a balanced, nutritious diet as recommended by the National Food and Nutrition Board. Therapeutic diets must be provided according to a service plan. Diets that cannot be prepared by a lay person must be calculated by a qualified dietician. Dietary counseling and nutrition education must be available. Facilities designate a person who will be responsible for food service.

Agreements

ALFs are required to complete a consumer disclosure statement developed by the Department that includes pre-admission, admission, and discharge processes; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services. An admission agreement is required that includes the services provided and charges for services, including any nursing services, with a statement that such services and supplies could be a Medicare benefit.

Facilities must have written policies regarding admission policy, services provided, charges, refunds, responsibilities of the facility and residents, privileges of residents, and other rules and regulations which are made available to residents and staff.

Provisions for Serving People with Dementia

A disclosure statement is required that describes the nature of the care or treatment provided and describes the pre-admission process, admission process, discharge and transfer, planning and implementation of care, change in condition issues, staff training on dementia care, the physical environment, and staffing.

Alzheimer's facilities must have activities that encourage socialization, cognitive awareness (i.e., crafts, arts, story telling, reading, music, discussion, reminiscences, and others), self-expression, and physical activity in a planned and structured program.

All staff must have four hours of dementia-specific training before assuming duties; 16 hours of on-the-job supervision during the first 16 hours of employment; and 12 hours of annual in-service training. Facilities with 17 or more residents must have an activity director 20 hours a week. Smaller facilities designate a person to plan, supply, implement, and record activities.

Medication Administration

The rules allow licensed staff and medication aides to administer medications as well as to assist with or supervise medications. Delegation to unlicensed aides is allowed.

Public Financing

A Medicaid HCBS waiver, CBA, covering assisted living and other waiver services, was effective in 1994 and serves elders and adults with disabilities. Providers that participate in the waiver must meet additional Medicaid standards that include additional training for managers and staff, required services, interdisciplinary team meetings (resident, facility and the Department of Aging and Disability Services' case manager, RN or contract manager).

Services are available in several living arrangements assisted living apartments (single and double occupancy); residential care apartments; and residential care non-apartments.

- An assisted living apartment setting is an apartment for single occupancy that is a private space (minimum 220 square feet plus bathroom) with individual living and sleeping areas, a kitchen, bathroom, and adequate storage space.
- A residential care apartment (minimum 350 square feet per participant) must be a double-occupancy apartment with a connected bedroom, kitchen, and bathroom area.

- A residential care non-apartment setting is defined as a licensed ALF with living units that do not meet either the definition of an assisted living apartment or a residential care apartment. Living units may be double-occupancy and must be free-standing; and be licensed for 16 or fewer beds.

A tiered payment system was implemented in September 2000 for assisted living services covered by the CBA waiver. Rates are established by the HHS Commission. Two sets of rates have been developed: enhanced rates for providers that agree to pass through wage increases to direct care workers and a lower set of rates for other assisted living providers. Payments vary by level and by setting.

The enhanced rates range from \$50.68 to \$67.76 a day in a single occupancy assisted living apartment; \$43.69-\$60.76 a day in double occupancy apartments; and \$25.13 to \$42.21 in non-apartment settings. Payments for residential care apartment and non-apartment settings are based on 20 participant levels and range from \$41.36-\$42.36 for residential care apartment settings and \$32.70-\$33.70 for non-apartment settings.

Medicaid Participation					
2007		2004		2002	
Facilities	Participants	Facilities	Participants	Facilities	Participants
220	2,393	300	2,851	309	2,263

Medicaid Payment Rates Effective September 1, 2007			
	Assisted Living Apartment	Double Occupancy Apartment	Non-Apartment
Assisted living 1	\$67.76	\$60.76	\$42.21
Assisted living 2	\$62.80	\$55.81	\$37.25
Assisted living 3	\$56.04	\$49.05	\$30.50
Assisted living 4	\$58.63	\$51.64	\$33.08
Assisted living 5	\$52.40	\$45.42	\$26.86
Assisted living 6	\$50.68	\$43.69	\$25.13

The rates do not include room and board, which are paid by the resident. The state limits the amount that can be charged for room and board to Medicaid waiver clients in ALFs. The amount is equal to the SSI federal benefit rate minus a PNA of \$85.00, which leaves \$538 for room and board. For the Title XX funded program, the room and board payment is determined by a specific daily rate based on the type of residential setting. There are no restrictions on the amount that private-pay residents can be charged. The waiver includes a cap that limits CBA services to no more than 200% of the rate paid to nursing homes. Income supplementation is not allowed.

The calculation for PNA varies by program. Consumers on the Medicaid waivers receive \$85. Non-waiver Medicaid consumers receive \$123.

Staffing

Staff ratio requirements have been deleted. Facilities must develop staffing ratios based on the needs of residents. The normal staffing pattern must be disclosed to residents on admission. Night staff in small facilities must be immediately available. Larger facilities must have staff available and awake.

Training

The Department is required to develop a training program for inspectors that emphasizes the distinction between surveying ALFs and nursing facilities.

Administrators. Managers of small facilities must have a high school diploma or equivalency. Managers of ALFs with 17 or more beds must have an associate's degree in nursing, health care management, or a related field; a bachelor's degree; or at least one year of experience working in management or in the health care industry.

Managers or supervisors of facilities that advertise or market services to residents with Alzheimer's disease must be at least 21; have an associate's degree in nursing, health care management, or a related field; a bachelor's degree in psychology, gerontology, nursing, or a related field; or have at least one year of experience working with people with Alzheimer's disease.

Managers must have completed one course of at least 24 hours on management of facilities that includes: assisted living standards; resident characteristics; resident assessment and working with residents; basic principles of management; food and nutrition services; federal laws; community resources; ethics; and financial management. An additional eight hours of training are required within the first three months of employment.

All managers must have 12 hours of annual continuing education in at least two of the following areas: resident and provider rights and responsibilities; principles of management; skills for working with residents, families, and other professional providers; resident characteristics and needs; community resources; accounting and budgeting; basic emergency first aid; or federal laws.

Administrators in special care facilities must have a college degree (i.e., psychology, social work, counseling, gerontology, nursing, or a related field); an associate's degree in nursing or health care management; or one year experience working with persons with dementia and complete six hours of continuing education in dementia care.

Staff must receive four hours of orientation covering reporting abuse and neglect, confidentiality, universal precautions, conditions that require notification to the manager, resident rights, and emergency and evacuation procedures. Attendants must complete 16 hours of on-the-job training and supervision on: providing assistance with ADLs; health conditions and how they affect the provision of tasks; safety measures to prevent injury and accidents; emergency first-aid procedures; and managing dysfunctional behavior.

Six hours of annual continuing education are required for direct care staff, chosen from the following topics: promoting resident dignity, independence, individuality, privacy, and choice; resident rights and self-determination; communication techniques with persons with vision, hearing, or cognitive impairments; communicating with families; common physical,

psychological, social, and mental disorders that may increase with aging; essential facts about common physical and mental disorders; CPR; common medications and side effects; understanding mental illness; conflict resolution and de-escalation techniques; and information about community resources. One hour must cover behavior management such as prevention of aggressive behavior, fall prevention or alternatives to restraint.

Additional training topics are included for nurses, nurses aides, and medication aides. Staff in Alzheimer's facilities must receive:

- Four hours of dementia specific orientation on basic information about the causes, progression, and management of dementia;
- 16 hours of on-the-job supervision with 16 hours of orientation providing assistance with ADLs, emergency and evacuation procedures, and managing dysfunctional behavior; and
- 12 hours of annual in-service training regarding Alzheimer's disease covering assessing resident capabilities and developing and implementing service plans; promoting dignity, independence, and privacy; planning and facilitating activities; communicating with families; resident rights and principles of self-determination; care of persons with physical, cognitive, behavioral, and social disabilities; medical and social needs of residents; common psycho-tropic drugs and side effects; and local community resources.

Background Check

Facilities must provide written statements concerning their policy on criminal background checks and drug testing. Offenses which preclude employment are listed in statute (Section 250.006).

Monitoring

Unlicensed facilities may be subject to civil penalties between \$1,000 and \$10,000 for each violation. SB 1839 (2001) contained several provisions dealing with oversight and quality. Beginning in 2002, as part of their training, surveyors must observe the operations of facilities unrelated to survey activities for a minimum of ten days. Training that addresses at least one of the ten most common violations is provided to surveyors and providers twice a year. An early warning system is being developed to detect problems with quality that includes review of financial and quality of care indicators, quality of care monitors to inspect facilities, and the use of rapid response teams to assist facilities to improve compliance prior to a regular inspection or survey. An informal dispute resolution (IDR) system is also being developed.

A Medical Quality Assurance section has been formed. Quality monitor staff visit facilities and monitor compliance. The quality monitor provides information to the facility on best practices to help the facility develop a plan to maintain compliance. At this time, the quality monitors are only performing these monitors in nursing facilities, but the program will expand to

the ALFs. The state created a nurse liaison position in each region of the state to provide information to facilities on training opportunities and best practice information to allow the facilities to make better compliance decisions. The liaisons are currently visiting all three types of facilities, as requested or as needed.

Fees

Fees are \$100 plus \$5 a bed for Type A and B facilities, with a maximum of \$1,500 for a two year license, and \$50 for Type C facilities. In addition, an annual fee of \$100 must be paid for Alzheimer's certification. Additional fees are required for review of plans based on size, number of stories, and new construction or remodeling. In addition, additional fees are assessed and placed in a trust fund for the use of court appointed trustees. The fees (\$92.20) vary by type and size of facility.

RESIDENTIAL CARE AND ASSISTED LIVING COMPENDIUM: 2007

Files Available for This Report

REPORT INTRODUCTION (*including Cover, Table of Contents, Acknowledgments, and Acronyms*)

HTML: <http://aspe.hhs.gov/daltcp/reports/2007/07alcom.htm>
PDF: <http://aspe.hhs.gov/daltcp/reports/2007/07alcom.pdf>

SECTION 1. Overview of Residential Care and Assisted Living Policy

HTML: <http://aspe.hhs.gov/daltcp/reports/2007/07alcom1.htm>
PDF: <http://aspe.hhs.gov/daltcp/reports/2007/07alcom1.pdf>

SECTION 2. Comparison of State Policies

HTML: <http://aspe.hhs.gov/daltcp/reports/2007/07alcom2.htm>
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SECTION 3. State Summaries

HTML: <http://aspe.hhs.gov/daltcp/reports/2007/07alcom3.htm>
PDF: <http://aspe.hhs.gov/daltcp/reports/2007/07alcom3.pdf>

Each state's summary can also be viewed separately at:

Alabama	http://aspe.hhs.gov/daltcp/reports/2007/07alcomAL.pdf
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