

On the Edge in Assisted Living



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SEAN J. DOOLAN, Esq.

Doolan & Platt, LLP

PO Box 298, Windham, New York 12496

518-621-4209

Sean@DoolanandPlatt.com

www.DoolandandPlatt.com

U.S. Population Trends

- 15% increase of persons 65 yrs or older between 2000 and 2010 (General population only increased at 9.7%)
- Over 40 million people 65 years of age or older in 2010
- 30% increase of persons 85 yrs or older, between 2000 and 2010

» Source: US Census Bureau, 2010

Assisted Living Reform Act

- Effective February 23, 2005
- Designed to address licensing, inspections and regulation by the Department of Health
- Codified: Public Health Law Art 46-B
- Amends Social Service Law Sec. 2(25) and the State Finance Law Sec. 99-L
- Regulations- NYCRR Title 10 Chapter X – Assisted Living Residences

Legislative Intent

- Section 4650- ... Further the philosophy of assisted living emphasizes aging in place, personal dignity, autonomy, independence, privacy and freedom of choice.

Marketing Restrictions

- Residences using “assisted”, “assistive” or any derivation must be licensed pursuant to ALRA
- Class A Misdemeanor to operate residence as assisted living without licensure



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Mission & Vision

OUR MISSION

Our purpose is to provide an assistive living environment of warmth, substance and distinction where the needs of all individuals are responded to with sincerity and professionalism. We will distinguish ourselves by service to the community and earn a valued reputation for commitment and integrity.

OUR VISION

To be the preferred provider of assistive living services to seniors and their families in the communities that we serve.

DEFINITIONS

- **ADULT HOMES** – operated for the purpose to provide long term care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator. See Section 488.2
- **ENRICHED HOUSING** - same as adult home but primarily serving a population 65 years of age or older. See Section 487.2

Definitions, cont.

- **ASSISTED LIVING RESIDENCE** - 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 5 or more adults unrelated to the provider. New York Public Health Law Section 4651
- **SECTION 1001.2** - Must provide daily food service, twenty – four hour on-site monitoring, case management services, and development of an individualized service plan for each resident

Who Cannot be a Resident of an Assisted Living Residence

Persons who are/have:

- Chairfast and unable to independently transfer;
- Require physical assistance to walk;
- Require physical assistance to climb or descend stairs;
- Unmanaged urinary or bowel incontinence; or
- Dependent on medical equipment and require more than occasional assistance from medical personnel.

PRIOR REGULATORY FRAMEWORK

- Title 18 Chapter II subchapter D Adult care facilities
- Section 1001.1 – any conflicts title 10 prevails over title 18

Licensing Scheme

- If a facility meets the definition of assisted living set forth in ALRA, it must obtain licensure through the New York State Department of Health
- Facility must first be licensed as an adult home facility or enriched housing program before it can apply for a license to operate an assisted living residence

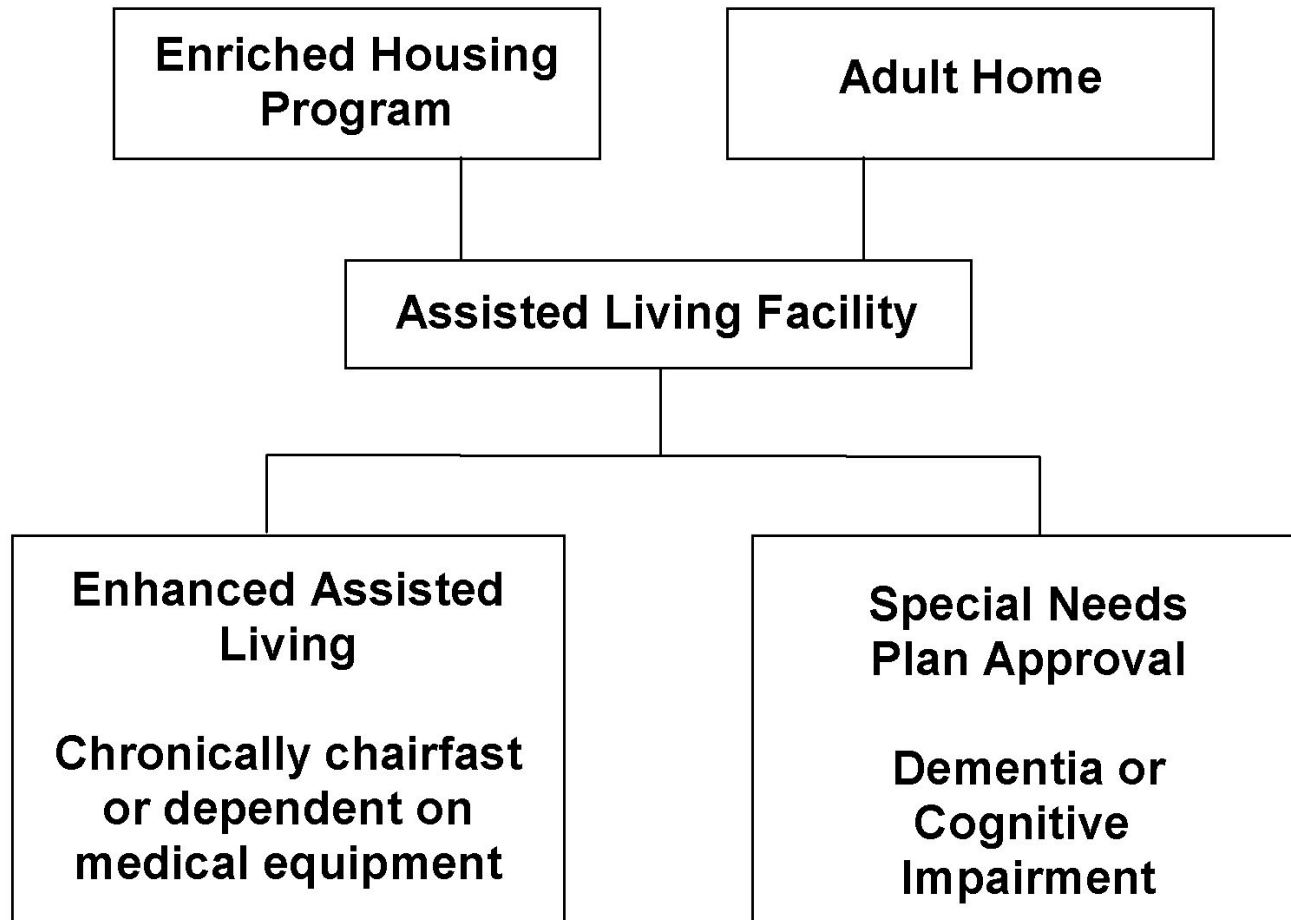
CERTIFICATES

- ONCE LICENSED AS ALR
- ENHANCED ASSISTED LIVING
- SPECIALS NEEDS ASSISTED LIVING

Are you confused yet?



Certificate Options



Examples of Exemptions from ALRA

- Licensed residential health care facilities;
- Hospitals;
- Continuing care retirement communities not operating as ALR;
- Assisted living programs;
- Retirement communities;
- Public or publicly assisted multi-family housing projects under HUD;
- Hospices;
- Adult care facilities not advertising as “assisted living” or required to obtain licensure;
- Independent senior housing facilities.

PRACTICE POINT

- FOIL FROM DEPARTMENT OF HEALTH ALL CERTIFICATES AND LICENSES OF THE FACILITY
- IN DISCOVERY DO THE SAME
- ENHANCED LIVING AND SPECIAL NEEDS CERTIFICATES MUST PROVIDE DEPARTMENT OF HEALTH STAFFING LEVELS, STAFF EDUCATION AND TRAINING, WORK EXPERIENCE OF STAFF

ALRA Regulations

Specific additions to be made under ALRA:

- Case manager on staff
- Incident reporting required
- Individual Service Plans
- Residency Agreement requirements

Admission & Retention Standards

- Section 1001.7
- Must do a pre-admission evaluation within 30 days prior to admission; only certain qualified persons can do the admission assessment
- A medical evaluation must be done within 30 days of admission, whenever there is change in the resident's condition, and no less than once every twelve months
- For an ALR look, at Title 18 Sections 487.4 & 488.4

Admission & Retention Standards, cont.

For EALR or SNALR

- Statement by physician that not suitable for ALR
- Statement that not in need of nursing home care
- In Admitting resident must consider the Personal Data and evaluation form as well as other listed information

Residency Agreement

- NY Public Health Law § 4658
- There must be a written residency agreement
- A copy of the residency agreement must be given to the resident, the resident's personal representative, and legal representative, if any.
- All residency agreements must be kept on file for at least three years after the termination of the residency

Residency Agreement

Minimum Requirements

ALRA sets forth specific provisions that must be included:

- Name, address & phone number of facility
- Owner name & the operator of the facility
- The name of an individual that can accept legal service for the facility
- A statement of the licensure status of the facility and any home health care or personal care service agency that is under an agreement with the facility
- The effective period of the residency agreement and the name of the resident's representatives

Residency Agreement

Minimum Requirements, cont.

Agreement must also state:

- Services to be provided to the resident;
- Monetary cost for those services;
- Additional services available, and cost;
- The name of any other agencies that are under contract with the facility;
- Criteria used for admission and retention of a resident;
- Procedures and standards for termination, discharge or transfer of a resident;

Individualized Service Plan (ISP)

- Pursuant to NY Pub. Health Law 4659, upon admission, an ISP must be developed for each resident of an assisted living facility upon admission
- The ISP must be developed “with the resident, the resident’s representative, the resident’s legal representative, if any, the assisted living operator, and [if appropriate] a home care services agency”
- The ISP must be developed in consultation with the resident’s physician
- Section 1001.7 must be implemented within the first 30 days

Individualized Service Plan (ISP), cont.

- Must be reviewed and revised every six months and whenever ordered by physician
- Or, as frequently as necessary to reflect the changing care needs of the resident
- To extent necessary, such review shall be undertaken in consultation with the resident's physician

Individualized Service Plan (ISP), cont.

- The ISP must be developed in accordance with the medical, nutritional, rehabilitation, functional, cognitive and other needs of the residents
- The ISP must include the services to be provided and how and by whom those services will be provided
- The ISP must be reviewed and revised as frequently as necessary to reflect changes in the resident's needs but not less frequently than once every six months

Wellness Nurse

- Role of the Wellness Nurse:
 - May hold different title
 - Typically RN or LPN
 - Conducts assessments of residents
 - Liaison with family and healthcare providers
 - Typically responsible for carrying out case management functions and supervise medication administration
- Important to investigate relationship between Wellness Nurse and Resident

RESIDENT'S RIGHTS

- An operator must provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status.
- No independent measure of damages
- Any waiver of the resident's rights is void as against public policy.
- Residents are given the right to be fully informed of their medical condition and proposed treatments.

No independent Measure of Damages



Private Causes of Action

- NY Pub. Law Section 2801-d DOES NOT provide a cause of action for Assisted Living Residents
 - ALR not considered “residential healthcare facilities”
- Look to Social Services Law 461-c: Warranty of Habitability

Resident's Rights, cont.

- A written statement of the resident's statutory rights must be given to the resident and posted in a public area of the facility.
- Residents are given the right to receive courteous, fair, and respectful care and treatment.
- Residents are given the right to adequate and appropriate assistance with activities of daily living.

Resident's Rights, cont., Section 1001.8

- Right to refuse treatment or medications but only “AFTER BEING FULLY INFORMED OF THE CONSEQUENCES OF SUCH ACTIONS”
- Right to have private consultations with your lawyer
- Right to give their version of an accident/incident
- EALR and SNALR must inform residents monthly of any openings in those programs
- Right to a council to hear resident complaints
- Right to request from a facility if it is licensed as ALR and/or has any certifications

COMPLAINTS

- Every resident must be given a consumer guide with the Department of Health's toll-free telephone number for the reporting of complaints: **1.866.893.6772**
- The Department of Health was given the responsibility under ALRA to prepare that consumer guide

GET THE RECORDS

- WAC 388-78A-2430
 - MUST MAKE RECORDS AVAILABLE WITHIN 24 HOURS OF REQUEST PURSUANT TO 70.129.030
 - MAKE COPIES AVAILABLE WITHIN 48 HOURS
 - CANNOT CHARGE MORE THAN 25 CENTS A PAGE

Resident Services Section 1001.10

24 hour on-site monitoring:

- The ability to respond to urgent or emergency needs or requests for assistance with appropriate staff, and
- Identify abrupt or progressive changes in behavior or in performing basic activities of daily living which may signify the need for reassessment and changes in service as reflected on the individualized service plan.

Case Management Services

Section 1001.7

- Oversee and coordinate the ISP
- Identify the facility's ability to meet the resident's needs using the Personal Data Sheet and the Resident Evaluation Form prescribed by the department at the time of admission and at least every twelve months
- Discuss whether the facility can meet the needs of the resident
- Provide referrals on an ongoing basis
- Coordinate Services to be provided

Case Management Services, cont.

Maintain a complete and accurate personal record for each resident as specified in Section 1000.12 of this part.

Case Services Management, cont.

Each resident shall be provided such personal care as is necessary to enable the resident to maintain good personal hygiene, to carry out the activities of daily living, to maintain good health, and to participate in the ongoing activities of the residence, per the resident's individualized service plan developed pursuant to 1001.7(h) of this part.

Case Management Services, cont.

- Medication management
- Must have policies and procedures in place to comply with regulations
- Very specific about medication administration records and what must be in there
- The physician orders for all PRN medications (including prescriptions and over-the-counter) shall identify those resident behaviors or symptoms warranting consideration of need for the medications

Case Management Services, cont.

If EALR is providing the services that would normally be provided by a home health care agency then the operator of the facility shall develop appropriate policies and procedures related to such services including but not limited to:

- (i) service specific delivery standards consistent with the current professional standards of practice, including staff supervision, which are reviewed and revised as necessary;
- (ii) documentation of service delivery.

Case Management Services, cont.

- Special Needs Assisted Living
- Supervision
- The operator shall maintain knowledge of the **general whereabouts** of each resident
- In the event that a resident is absent from the facility certain procedures and notifications must be followed that are spelled out in the regulations. I.E. the family, and law enforcement must be notified;
- Sufficient staff to supervise residents and respond to their needs must be available on all shifts

Case Management Services, cont.

- SNALRs
- ISP and case management records shall identify when a resident is periodically resistant to care and include a care plan to address it
- Activities - Weather permitting residents must be permitted to be outdoors everyday
- Food should be offered outside of the usual meal times in a manner acceptable to the special needs of the resident and mindful of the resident's functional abilities, preferences and meals. The resident's care plan should reflect these needs and preferences.
- To ensure optimal intake at mealtimes, unless contrary to the physician's orders, prescribed nutritional supplements shall be provided between and not at the same time as scheduled meals.

Personnel Enriched Housing

Part 488.9

- Similar to Adult Homes
- Designate Program Coordinator: responsible to comply with regulations
- Program Coordinator must be on-site and responsible for admissions and discharges
- Cannot work there if they abuse drugs or alcohol or suffer from mental illness
- Must speak or write English or speak predominant language of residents

Personnel, Enriched Housing

- Aides
- Requirements for the training of aides
- 40 hours of initial training
- Must have a demonstrated ability in meal preparation for groups of older people
- Must have knowledge of the nutritional needs of older persons
- Must be able to follow and prepare modified diets
- Must have knowledge of food protection principles
- Annual assessment of performance and effectiveness including at least one direct observation of performance

Personnel, cont.

- Must ensure the health status of its employees, and must assess and document it. Assessment shall be of sufficient scope so that no individual who is suffering from a degree of mental illness or addiction to alcohol or other drugs such that causes harm to others, or are not be able to perform duties
- Personnel must receive orientation to the policies and procedures of the facility
- Current Job Description for each position

Personnel Section 1001.11

ALRs licensed as Adult Homes part 487 requires:

- The operator shall designate an individual to be responsible for operating the residence in compliance with applicable laws and regulations and through direct performance or coordination.
- Must have sufficient staff to meet resident needs but minimally must provide 3.75 hours of personal care services per resident
- Adult homes
 - 1 staff member for census of 1-40
 - 2 for census of 41-80
 - 3 for census of 81-150
 - 4 for census of 151-200
 - Additional staff person is needed for each additional 60 residents
 - Provisions must be made for back up staff

PERSONNEL, cont.

Adult Homes

- Must have approval for in-service training for all personal care staff, plan for training new employees and ongoing in-service relevant to care
- Must develop in-service training on a twelve month schedule
- All new or current employees being newly assigned to perform personal care tasks must be trained within three months
- Maintain records of the training
- 2.0 hours food service per resident

Personnel, cont.

- Requirement that have a registered nurse on-site eight hours a day five days a week
- Requirements for LPN for remainder of the week
- RN on-call 24 hours a day

LEGISLATION

THREE BILLS

- A08870 - requires an RN on-site full time one shift a day at EALR and SNALR
- A08861 - requires uniform training of direct care staff; Strengthen training for medication administration
- A08862 - additional fines

Records and Reports Section 1001.12

- Operator must maintain complete, accurate and current personal records for each resident which must be available for review and inspection by department staff
- Personal data of resident, medical evaluations, health care proxy, pre-admission evaluation, subsequent evaluations, Individualized Service Plans, medication assistance records, and case management notes, admission and discharge records, **records of complaints, actions taken to address resident complaints and complaint resolution outcome** and , personnel records for each employee including professional licenses, qualifications for the job, medical examinations, performance examinations, resignations, dismissals, and other pertinent data

Records and Reports, cont.

- Detailed census report submitted annually
- Detailed financial information annually to the Department of Health
- Must submit financial statement including revenues and expenses by categories for the operation of the facility consistent with accounting principles

Enforcement

- Department of Health website list of facilities
- Inspected annually by DOH

http://www.health.ny.gov/facilities/adult_care/reports.htm

Enforcement, cont.

Social Services Section 461-a (g) – (i) an operator may deny a resident visitors individuals who the operator has reasonable cause to believe would directly endanger the safety of such residents. (h) the operator must record a detailed written statement describing the reasons for denial of access to any such individual. This statement must be accessible to the residents; the person denied access may bring an action in supreme court in the county in which the facility is located for an order granting such persons access to such facility. If the Court finds that such denial was made in bad faith, the operator of the facility shall be liable for all costs, including reasonable attorney fees, and the court may, in its discretion, assess a civil penalty not to exceed fifty dollars per day each day that such access was denied.

The End



Thank you