



STATE OF NEW YORK DEPARTMENT OF HEALTH

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Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

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Dear Operator:

On October 26, 2004 Governor Pataki signed The Assisted Living Reform Act as Chapter 2 of the Laws of 2004. The Act adds Article 46-B to the Public Health Law (PHL) which establishes definitions and requirements for assisted living. The purpose of this letter is to provide you with an overview of this statute's provisions and requirements.

The Department of Health is working closely with the State Office for the Aging, the Office of Mental Health, and the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities to implement this Act. To determine the steps your organization may need to take as a result of this law, you should carefully review the material provided with this letter and then complete the enclosed application. If you wish to obtain a complete copy of the Assisted Living Reform Act, it is available on the Department's website at (www.health.state.ny.us).

General Provisions

The Assisted Living Reform Act creates several new certification categories: Assisted Living Residence (ALR), Enhanced Assisted Living Residence (EALR) and Special Needs Assisted Living Residence (SNALR). The Act defines "assisted living" and "assisted living residence" as "an entity" which provides or arranges for housing, on-site monitoring and personal care services and/or home care services (either directly or indirectly) in a home-like setting to five or more adult residents unrelated to the assisted living provider.

In order to be licensed as an ALR, EALR or SNALR, the Act requires all assisted living residences to be certified as adult homes or enriched housing programs in accordance with Article 7 of the Social Services Law (Article 7). Residences that are currently unlicensed desiring to be certified as an ALR, EALR or SNALR must simultaneously submit the application included in this letter and an Article 7 application to seek approval as an adult home or enriched housing program. The residence must also be in compliance with all rules and regulations applicable to such facilities unless waived by the Department.

Licensed Assisted Living Programs (ALPs), under Section 461-1 of the Social Services Law are exempt from the provisions of the Assisted Living Reform Act for the beds that are certified as ALP and will operate under the existing statute and regulations. They will not be required to meet the requirements described in this letter. However, existing ALPs should review the provisions of this letter to determine what other actions may need to be taken in regard to non-ALP bed capacity.

The Assisted Living Reform Act also exempts several other categories of providers, including certain providers licensed by the Department of Health or Office of Mental Health, Naturally Occurring Retirement Communities, Hospice and Hospice Residences, and Continuing Care Retirement Communities (CCRCs) that are not currently operating or proposing to develop assisted living residences. Public or publicly assisted multi-family housing administered or regulated by the United States Department of Housing and Urban Development or the New York State Division of Housing and Community Renewal are also exempt from the Assisted Living Reform Act as long as they do not provide or arrange for home care and/or 24-hour supervision in accordance with PHL 4651(1)(f). Housing programs in receipt of grants for conversion from elderly housing to assisted living pursuant to Section 1701 (q)(e) of the United States Code are required to apply.

For the purpose of determining the necessity to become licensed as an ALR, the term Independent Senior Housing shall mean:

- A housing setting serving seniors in which no individual or entity provides, arranges for or coordinates (either directly or indirectly), on-site monitoring as defined by §4651(12), and either personal care or home care services for five or more residents of such housing setting unrelated to the housing provider; and in which
- Neither the housing setting nor other services provided in such setting are advertised or marketed to the public as assisted living, assistive living or any derivation of such terms.

The provision, arrangement or coordination of one or more of the following services shall not, in and of itself, require licensure as an ALR: room, board, laundry, housekeeping, transportation, information and referral, case management, security or “concierge”-like services.

Access to hospice care will continue to be available to individuals who reside in these settings.

Provision of Assisted Living Residence Services

Individuals with the following, chronic needs or conditions cannot be admitted to an ALR:

- Chairfast and unable to transfer independently or requires the physical assistance of another person to transfer;
- Requires physical assistance from another person to walk;
- Requires physical assistance from another person to climb or descend stairs;

- Unmanaged urinary or bowel incontinence;
 - Dependent on medical equipment and requires more than intermittent or occasional assistance from medical personnel.

However, if after admission residents develop these needs or conditions, they may be retained by a licensed ALR with EALR certification at the operator's and resident's option. EALRs are not mandated to retain residents once they develop these needs or conditions. The resident retention standards must be clearly disclosed and described by the residence in the residency agreement.

The ALR level is viewed as a basic level of care with operator responsibilities and services much like those in adult homes or enriched housing programs with some variations based on the qualifications and training of staff. An additional requirement for ALRs is an individualized service plan (ISP) for each resident. The ISP describes what services will be provided and the identified provider or staff responsible. The ISP must be reviewed and updated every six months as well as whenever a resident has a significant change in needs.

The ISPs will require review of an individual's medical, nutritional, rehabilitative, functional and cognitive needs and a plan to meet this individual's needs. The admission ISP must be developed based on information included in the evaluation tool. The Department is developing a model evaluation tool or a provider can utilize an alternative evaluation tool as long as it is approved by the Department. Approval of alternative tools will require that such forms include the minimum data elements included in the Department's model evaluation tool. Development of the ISP must include the resident, and/or resident's representative if any, and/or legal representative if any, the ALR operator, and, if necessary, the home care services agency. The ISP must also be developed in consultation with the physician. The Department's evaluation tool and more detailed information on the ISP process will be shared at a later date.

All operators applying for ALR licensure must meet the following requirements:

The operator must be in good standing with the Department, as defined in the statute;

- Conduct appropriate pre-admission evaluations and develop ISPs;
- Provide appropriate residency agreements and disclosures;
- Include a residents' bill of rights as specified in the statute;
- Provide for the protection of resident refunds as applicable; and
- Documentation the physician has physically examined the resident within the last 30 days.

Entities not in good standing as well as those currently not licensed as an adult home or enriched housing program will undergo a full review to determine that the applicant is of good moral character and is competent to operate the residence.

Residences applying for ALR certification must apply for the facility's full capacity excluding any ALP designated beds.

The Assisted Living Reform Act creates two new certification categories for licensed ALRs: Enhanced Assisted Living Residence (EALR) and Special Needs Assisted Living Residence (SNALR). Entities that request to be certified as EALR or SNALR must be eligible as an ALR and as an adult home or enriched housing program.

Enhanced Assisted Living Residence

This certification will allow residents to age in place. This is a major new feature of the Assisted Living Reform Act. Assisted living residences with EALR certification may admit and retain residents who exceed the retention standards of adult homes, enriched housing programs or assisted living residences. EALRs cannot admit residents in need of 24-hour skilled nursing care or medical care. A written indication from the resident's physician that the resident does not require 24-hour skilled nursing care or medical care is required prior to admission. However, EALRs may retain residents in need of 24-hour skilled nursing care or medical care if certain conditions are met as described in this section.

One of the primary differences will be the availability of operator-provided nursing services. EALRs and SNALRs may directly employ a registered professional or licensed practical nurse (RN or LPN), to provide nursing services and supervise the provision of care. This includes performing any task or responsibility allowed within the scope of practice defined in Article 139 of the Education Law. EALRs and SNALRs are not required to have a nurse on staff and may provide skilled services via a home care services agency licensed under Article 36 of the Public Health Law.

In order to obtain an EALR certificate, an applicant must submit a plan to the Department identifying how the additional needs of the residents will be safely and appropriately met. The plan must include, but not be limited to, a written description of services available, staffing levels, staff education and training, work experience, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of the residents.

Enhanced assisted living residences will have the flexibility to admit and retain residents whose care needs increase. Residents who require 24-hour skilled nursing care or medical care may be retained if all of the following conditions are met:

- The resident must hire appropriate nursing, medical or hospice staff to care for his or her increased needs;
- The resident's physician, home care services agency, if applicable, or hospice medical director determine and document that, with the provision of additional nursing, medical and/or hospice care, the resident's health and safety is not at risk, and the resident does not need to be discharged to another setting;
- The operator agrees to retain the resident and to coordinate the care provided either by the EALR staff or other provider; and
- The resident is otherwise eligible to reside in the facility.

No resident can be cared for under the terms of an EALR certificate unless the operator, the resident's physician, and, if applicable, the resident's licensed or certified home care agency all agree that the additional needs of the resident can be safely and appropriately met. The resident and/or resident's representative must be in agreement with this placement decision.

Special Needs Assisted Living Residence

The second certification category for which ALRs may apply is Special Needs Assisted Living Residence (SNALR). The SNALR certification requires ALRs that advertise or market themselves as serving individuals with special needs, including but not limited to dementia or cognitive impairments, to apply to the Department of Health for special needs assisted living residence certification. All facilities currently licensed under Article 7 of the Social Services Law that operate dedicated dementia facilities and/or units will be required to apply for this designation. The Department has revised its current policy and procedures for such dementia units.

Operators that currently have Department approvals for such units should review the requirements carefully and provide a description of any changes that will be made in their programs as part of their application submission,

No adult home, enriched housing program, or ALR may advertise or market itself as providing specialized services to individuals with special needs unless and until the residence has been certified as an ALR and has been issued a SNALR certificate,

Entities requesting certification as a SNALR that are not currently approved for such units by the Department must submit a written description of specialized services, staffing levels, staff education and training, work experience, professional affiliations or special considerations relevant to serving persons with special needs, as well as any environmental modifications that have been made or will be made to protect the health, safety, and welfare of such persons in residence. Policy and procedures reflective of the special needs guidelines should also be provided. These requirements are further explained in the enclosed application.

The Department may develop additional special need certification categories in the future based on further review of the licensure applications received.

Structural Requirements for ALR, EALR and SNALR

Existing Structures

Buildings for which construction commenced prior to the date of this letter for which Certificates of Occupancy have been issued or for which occupancy has been locally approved but which are not yet occupied on the date of this letter or which were existing and occupied prior to the date of this letter, will be considered existing structures.

An existing building that is not currently licensed as an enriched housing program or adult home and is seeking to be licensed as an ALR, EALR or SNALR shall meet all applicable structural and environmental requirements currently in effect for either an enriched housing program or an adult home. While we recognize that many existing buildings were constructed prior to the adoption of new and/or revised building codes initial licensure and certification will be based on the determination of the local authority having jurisdiction that it will issue a Certificate of Occupancy (C of O) for the proposed use of the facility. However, in situations where a C of O reflecting currently applied occupancy group designation for an enriched housing program and an adult home is not available or attainable from the local authority having jurisdiction, but there is a valid C of O in place for the building, the Department will accept an architects or engineer's letter of certification signed by a registered architect (RA) or professional engineer (PE) certifying that the building(s) under consideration meets all applicable codes, rules and regulations.

In addition to the above, the ALR, EALR and SNALR will require the following five (5) safety features:

1. An automatic sprinkler system throughout the building.
2. A supervised smoke-detection system throughout the building.
3. Fire protection systems directly connected to the local fire department, or to a 24-hour attended central station,
4. Handrails on both sides of all resident-use corridors and stairways.
5. A centralized emergency call-system in all bedrooms and toilet and bathing areas.

In addition to building code requirements, all EALRs and SNALRs must provide the following sixth safety feature:

6. Buildings with a capacity of more than 16 residents shall have smoke barriers*** to divide each floor into at least two smoke compartments neither of which exceed 100 feet in length.

***Smoke Barrier - A continuous fire-rated partition or wall, extending from one exterior wall to another exterior wall, with all openings (doorways, etc.) protected with fire-rated and smoke-tight doors equipped with appropriate hardware.

New Structures

A new building constructed as an ALR, SNALR or EALR shall meet the applicable structural and environmental requirements currently in effect for a new enriched housing program or an adult home. A new building shall be any building for which construction is commenced after the date of this letter.

New buildings will also be required to meet the five safety features mentioned above. EALRs and SNALRs with capacities in excess of 16 beds shall also meet the additional sixth safety feature referenced above.

Currently there are two building codes in effect in New York State. All of New York State except New York City is subject to the NYS Building Code (I-1 or R-4*). Facilities in NYC must meet J-2 occupancy requirements.

*R-4 applies to supervised 24-hour care facilities for 5 to 16 residents.

Application Fees

The basic biennial assisted living residence fee is \$500 per facility plus an additional \$50 for each ALR resident whose income exceeds 400% of the Federal Poverty Level (FPL). The maximum ALR fee required for an individual facility is \$5,000. In 2005, 400% of the FPL represents an income level of \$38,080 per individual. Financial information on residents who are below the 400% threshold and are not Medicaid or SSI eligible must be maintained to verify their eligibility for an exemption to the \$50.00 fee.

The biennial fee for EALR certification is \$2,000. The biennial fee for SNALR certification is \$2,000. Facilities applying for both EALR and SNALR at the same time are entitled to a discount and will only be required to remit \$3,000 for both certifications.

All applicable fees must be submitted with the initial application for certification. Checks should be made payable to: "New York State Department of Health."

Licensed Facilities

Operators of an existing certified adult home or enriched housing program must submit the enclosed application to the Department of Health within 60 days of this letter indicating the intention to be to be licensed as an ALR, EALR or SNALR. All operators who are currently advertising or marketing their facility as assisted living, assisted living residence or assistive living, or words or terms to that effect to the public must submit such application or cease such advertising or marketing.

If you are not applying at this time for ALR, EALR or SNALR, please complete Section A of this application and return it to the Department. You are not required to complete the remaining parts of the application. Declining to apply for ALR licensure, SNALR or EALR at this time does not preclude you from applying at a later date.

All applications should be forwarded to the following address:

NYS Department of Health
Division of Home and Community Based Care
Attention: Bureau of ACF Licensure and Certification
161 Delaware Avenue
Delmar, New York 12054

Unlicensed Facilities

The Assisted Living Reform Act (PHL §4656) states that: No entity shall establish, operate, provide, conduct, or offer assisted living in this state, or hold itself out as an entity which otherwise meets the definition of assisted living or advertise itself as assisted living or by a similar term, without obtaining the approval of the department to operate as an adult care facility pursuant to Title 2 of the Social Services Law (Article 7).

Facilities that are not licensed under Article 7 or those that have not submitted applications for such licensure should also complete the Assisted Living Residence application enclosed with this letter. Such organizations are also required to simultaneously file an application as an adult home or enriched housing program. The adult home/enriched housing program application form can be downloaded from the Certificate of Need page on the Department's website (www.health.state.ny.us). Applicants with existing structures or those nearing completion should also complete Part II of this application. You must submit this application within 60 days of receipt of this letter.

It should be noted that Section 460-d(9) of the Social Services Law authorizes the Department to impose a fine of up to \$1,000 per day for the operation of an adult care facility without an operating certificate. Additionally, pursuant to Section 461-b 2, knowingly operating an adult care facility without prior written approval is a class A misdemeanor. All questions on licensure as an adult home or enriched housing program, without regard to ALR licensure and EALR and/or SNALR certification, should be directed to the Division of Home and Community Based Care's Licensure and Certification unit at 1-866-893-6772.

The following additional materials will shortly be available on the Department's website for your review and use in this process:

- Model Residency Agreement, Exhibits and Addenda
- Resident Rights
- Admission and Discharge Criteria
- Staffing and Training Requirements
- Special Needs Assisted Living Plan Overview and Requirements
- Enhanced Assisted Living Guidelines

If you have any further questions or need further clarification please contact the Division of Home and Community Based Care at 1-866-893-6772 or write to the Bureau of ACF Licensure and Certification at the letterhead address.

Sincerely,



Robert P. Dougherty
Director
Division of Home and Community Based Care