

State Assisted Living Regulatory/Policy Changes in 2008* **Summary of NCAL's Findings, published March 2009**

- At least 18 states made regulatory changes impacting assisted living/residential care communities in 2008 with at least six of these states making major modifications to their regulations. At least 10 states are working on significant or major changes or in 2009.
- While Maryland and Tennessee overhauled their regulations in 2008, New York promulgated regulations establishing assisted living licensure under a 2004 statute and New Hampshire formally adopted rules governing one of two levels of licensure.
- As in previous years, states continued developing standards to accommodate residents with higher health care needs.
- In the state of Washington, a new law requires boarding homes withdrawing from the Medicaid program to continue to provide Medicaid services to existing Medicaid residents and to residents who have been paying privately for at least two years and who become eligible for Medicaid within 180 days of the withdrawal. However, a federal district court ruled Jan. 14, 2009 that the law's provisions were unconstitutional under the Contract Clause of the U.S. Constitution for provider agreements in effect March 28, 2008, when the law was passed; the law remained in effect for provider agreements entered into after March 28, 2008.
- Trends include the following. In 2008, states:
 - Made changes to emergency/disaster preparedness and fire safety standards (including CA, CO, MD, MO, MS, OK, VA);
 - Increased staff training requirements (including CO, CT, MD, VA, WA);
 - Increased or modified medication management standards (including MD, NJ, RI, VA);
 - Added or changed background check requirements (including GA, MD, MS, WA);
 - Added disclosure standards (including CA, CO, MD);
 - Added staffing requirements (including MD, MO).

*** Derived from information collected for the National Center for Assisted Living (NCAL) *Assisted Living State Regulatory Review 2009*, NCAL, Washington, D.C. For additional information, please contact Karl Polzer, NCAL Senior Policy Director, at 202-898-6320 or kpolzer@ncal.org.**

2008 State-by-State Highlights

The following state-by-state highlights of assisted living regulatory/statutory and Medicaid policy changes are based on information provided by state officials and NCAL's state affiliates:

California:

- Enacted two new laws enhancing resident protections, effective in 2009:
 - Health and Safety (H&S) Code Section 1569.658 requires licensees annually to disclose rate increases from the previous three years of operation to prospective residents.
 - H&S Code Section 1569.695 requires licensees to establish plans for sheltering in place for up to 72 hours following an emergency or disaster.
- Renumbered and reformatted regulations to allow for greater clarity and ease of use.

Colorado:

- Increased staff training requirements concerning certified first aid and lift assistance.
 - There must be one staff member onsite at all times who has current certification in adult first aid.
 - The certification must meet the standards of the American Red Cross or American Heart Association.
 - The training must be completed prior to providing direct care to residents.
 - Copies of the current certification must be kept in staff personnel files and available for Health Department review.
 - Staff training on first aid and injury response must include procedures for providing lift assistance to residents.
- Established cardiopulmonary resuscitation (CPR) directives.
 - At admission, the facility must inform the resident or their legal representative about the resident's right to receive CPR or have a written CPR directive refusing CPR.
 - At least annually or upon a significant change in condition, the facility must review the CPR options with each resident or their legal representative.
 - At admission and each subsequent review, the facility and the resident or their legal representative must sign and date a document acknowledging

that the resident's CPR options were reviewed and understood. This documentation must be in each resident's record.

- The facility will ensure that staff knows where to immediately find each resident's CPR directive.
- Established lift assistance procedures.
 - The facility must describe in writing, procedures for determining when it's appropriate for staff to assist a resident who has fallen and when local emergency medical responders should be called.
 - These lift procedures must be shared with local emergency medical technicians.
- Added to disclosure requirements.
 - There must be written evidence that onsite availability of first aid certified staff has been disclosed to residents or their legal representative upon admission.

Connecticut:

- Increased annual training requirements for staff caring for residents with Alzheimer's disease and other dementias.

Georgia:

- Effective February 2008, amended regulations to permit the Department of Human Resources to obtain criminal background information on owners of Personal Care Homes, to prohibit owners with certain criminal records from operating licensed facilities, and to provide for definitions.

Maine:

- In August 2008 added provisions outlining:
 - Measures the state agency can take if a facility is operating without a license (including injunctive relief and minimum/maximum fines), and
 - When it is permissible to release confidential information.

Maryland:

- A major revision of the regulations became final December 29, 2008. Changes include:

- A requirement, when medically necessary, for awake overnight staff.
- Background checks (now defined as “a check of court and other records by a private agency”) for owners and staff.
- A prohibition from providing day, partial, or hourly adult day care services without an appropriate medical day care license.
- A new licensing fee period (two years instead of one) and structure (1-3 beds: \$100; 4-15 beds: \$150; 16 or more beds: \$150 plus \$8 per bed over 15).
- Additional disclosure requirements (guidelines available at: www.dhmf.state.md.us/ohcq).
- A requirement that all areas of the facility accessed by staff must be available to announced and unannounced inspections, at all times.
- A new Informal Dispute Resolution process that will allow a licensee to question violations within 10 calendar days of receipt of the statement of violations.
- A requirement for all assisted living facilities to develop a quality assurance plan.
- Added requirements for staffing and staff responsibilities, including procedures for determining whether nursing care can be provided for a facility resident.
- A new Resident Assessment Tool that will be released once the regulations go into full force and effect.
- A requirement that residents must be reassessed by the delegating nurse within 48 hours of readmission to the program upon non-routine hospitalization or a 15-day or greater stay in any skilled nursing facility, or if there is a significant change in condition. (This requirement may be extended to seven calendar days if a delegating nurse determines, in the nurse’s clinical judgment, that the resident does not require a full assessment within 48 hours. Such a determination must be documented in the resident’s record.)
- A requirement that care notes be written for each resident on admission and at least weekly.
- Additional training requirements for assisted living managers.
- New infection control requirements and guidelines.
- A requirement that a licensed pharmacist conduct an on-site review of physician prescriptions, orders, and resident records at least every six months for every resident receiving nine or more medications.
- Limitation of the use of physical and chemical restraints.
- A requirement that emergency planning and preparedness procedures address the following:
 - The evacuation, transportation, or sheltering-in-place of residents;
 - Notification to families, staff, and the Office of Health Care Quality regarding the action that will be taken concerning the safety and well-being of the residents;

- Staff coverage, organization, and assignment of responsibilities; and
- The continuity of operation, including procuring essential goods, equipment, and services; and relocation to alternative facilities (methods of transportation must be identified but not guaranteed).

Mississippi:

- New regulations went into effect February 22, 2008 that
 - Clarified wording of criminal history record check rules by deleting the word “alleged” in Section 101.03 (8).
 - Clarified wording of the rules concerning grounds for denial, suspension, and revocation of a license by deleting the word “excessive” in Section 108.01 (3).
 - Revised emergency preparedness requirements.

Missouri:

- Added staffing requirements requiring Assisted Living Facilities to have a licensed nurse employed for at least eight hours a day for every 30 residents.
- For both Assisted Living Facilities and Residential Care Facilities, added to fire alarm requirements specific installation guidance for spacing and placement of interconnected smoke detectors based on whether a facility has a sprinkler system.

New Hampshire:

- In April 2008 the state formally adopted rules governing one of two levels of licensure: Assisted Living Residences-Residential Care, which is a more social model where medical or nursing care is more limited. (In 2006, the state adopted regulations for Assisted Living Residences-Supported Residential Health Care, a level of licensure allowing nursing home eligible residents to remain in assisted living if appropriate care and services are provided.)

New Jersey:

- The Department of Health and Senior Services began allowing staff trained to administer medication to residents under the delegation of a registered nurse to use disposable insulin delivering mechanical devices commonly known as “pens.”
- New Jersey consolidated its home and community-based waiver programs into one waiver: Global Options for Long Term Care (GO). Assisted living is a covered service under GO.

New York:

- Regulations establishing assisted living licensure under a law enacted in 2004 were promulgated in March 2008.

Oklahoma:

- Legislation enacted in 2008 allows assisted living facilities constructed before Nov. 1, 2008 to house residents who are not capable of responding in emergency situations without physical assistance from staff or are not capable of self preservation if, as part of the annual licensure renewal process, the facility discloses that it houses any residents of this type and the facility installs fire sprinkler protection and an alarm system in accordance with the building code for I-2 facilities.

Oregon:

- Added provisional license rule to expedite licensure under certain circumstances.
- Rescinded moratorium on building new assisted living facilities.

Rhode Island:

- Changed rules so that after July 1, 2008 no person may serve as a medication aide without holding a valid medication aide registration from the Department of Health Facilities.

Tennessee:

- The Long-Term Care Community Choices Act of 2008:

- Allows Assisted Care Living Facilities to care for residents with greater health care needs and
- Clarifies that hospice services can be provided in such facilities.

Texas:

- Moved from a one-year to a two-year license.
- Modified fee schedules for the two-year license from \$100 fee and \$5 per bed to \$200 fee and \$10 per bed.

Virginia:

- In 2008, Virginia planned for the implementation of comprehensive legislation that was passed in 2005. Additionally, regulations were written and promulgated pertaining to the following:
 - Licensure of assisted living administrators.
 - Training, testing, and registration of medication aides.
 - Reporting of disease outbreaks.
 - Documentation for safeguarding resident funds.
 - Additions to fire and emergency evacuation drills.

Washington:

- On March 28, 2008, a new law (SB 6807) took effect requiring boarding homes withdrawing from the Medicaid program to continue to provide Medicaid services to existing Medicaid residents and to residents who have been paying privately for at least two years and who become eligible for Medicaid within 180 days of the withdrawal. After a challenge by a provider association, a federal district court ruled Jan. 14, 2009 that the law's provisions were unconstitutional under the Contract Clause of the U.S. Constitution for provider agreements in effect March 28, 2008, when the law was passed; the law remains in effect for provider agreements entered into after March 28, 2008.
- In the November 2008 general election, Washington state voters approved Initiative 1029 requiring FBI background checks for all home and community-based caregivers, including those in boarding homes, and implementing additional caregiver training and new certification requirements. The initiative increases required training to 75 hours and mandates a certification examination for all caregivers who have not met current training standards by January 2010. As of January 2009, Washington State Governor Chris Gregoire had proposed suspension of the initiative as a budget-cutting measure.

- Regulatory changes for boarding homes during 2008 include:
 - A program and processes to protect residents from abuse and neglect by facility staff and volunteers.
 - Rules for use of audio, video, and electronic monitoring.
 - Updated standards for water supply, lighting, toilet rooms, and bathrooms for new construction.

- In 2009, new regulations:
 - Establish an assessment process for residents receiving respite care, including a negotiated service agreement.
 - Change the enforcement process so that emphasis is placed on being in compliance with regulations rather than the exact process laid out in plans of correction.