

State Assisted Living Regulatory/Policy Changes in 2010:*

A Summary of NCAL's Findings, Published March 2011

- At least 18 states reported making statutory, regulatory, or policy changes in 2010 or January 2011 impacting assisted living/residential care communities. At least six states made major changes including Idaho, Kentucky, Oregon, Pennsylvania, South Carolina, and Texas.
- Pursuant to legislation enacted in 2007, Pennsylvania implemented new assisted living regulations on January 18, 2011, thereby creating a second level of licensure alongside personal care homes. Oregon developed new rules for the endorsement of Memory Care Communities. Endorsement rules focus on person-centered care, consumer protection, staff training specific to caring for people with dementia, and enhanced physical plant and environmental requirements. Rhode Island passed legislation that, once implemented, will expand the types of assisted living residents that may receive skilled nursing care or therapy and the length of time they may receive such services.
- Washington state clarified that boarding homes must fully disclose to residents a facility's policy on accepting Medicaid as a payment source. New Jersey passed legislation requiring an assisted living residence or comprehensive personal care home that surrenders its license and promised not to discharge Medicaid residents to escrow funds to pay for care in an alternate facility.
- Focal points of state assisted living policy development in 2010 include life safety, disclosure of information, Alzheimer's/dementia standards, medication management, background checks, and regulatory enforcement. Other areas of change include move-in/move-out requirements, resident assessment, protection from exploitation, staff training, and TB testing standards.
- Trends include the following: In 2010, states:
 - Made changes to fire or physical safety standards (including CA, CO, FL, KS, OK, OR, TX);
 - Added to or changed disclosure or information requirements/policies (including DE, ID, SC, WA);
 - Created or expanded standards to protect residents with Alzheimer's disease or other dementias (including NY, OR);

*** Derived from information collected for the National Center for Assisted Living (NCAL) *Assisted Living State Regulatory Review 2011*, NCAL, Washington, D.C. For additional information, please contact Karl Polzer, NCAL Senior Policy Director, at 202-898-6320 or kpolzer@ncal.org.**

- Added to or changed background check requirements (including FL, TX, WA);
 - Changed rules relating to medication management (including FL, KY);
 - Addressed TB testing requirements/consistency with federal standards (including SC, WA);
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2010 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:

Legislation enacted in 2010 impacts Continuing Care Retirement Communities (CCRCs), which are licensed as Residential Care Facilities for the Elderly (RCFE). Assembly Bill (AB) 1433 (Eng and Beall), Chapter 443, Statutes of 2010 added the definition of a "residential temporary relocation" as a relocation of one or more residents due to a change of use or major repairs or renovations that lasts at least nine months but that does not exceed 18 months without the written agreement of the resident. Providers will now be required to include in CCRC resident contracts the procedures to be followed to ensure that residential temporary relocations provide comparable levels of care, service, and living accommodations. Providers will also be required to have specific procedures for returning the relocated resident when the residential living units will be ready for occupancy. Information on 2010 chaptered legislation may be found at:

<http://www.cclld.ca.gov/PG830.htm>. General California legislative information may be found at: <http://www.leginfo.gov>.

The Community Care Licensing Division released Regulation Package #0109-01, effective August 8, 2010, which affects bedridden and nonambulatory residents. This package updated Title 22, Division 6, Chapter 8, RCFE, sections 87202, 87208, 87212, 87455, 87606, and 87633, relating to the care of bedridden persons in RCFEs. These regulations also incorporated the provisions of Assembly Bill (AB) 762, (Lowenthal), Chapter 471, Statutes of 2009, effective January 1, 2010, which for purposes of fire clearance only, specify that a bedridden person is a person who cannot turn or reposition in bed without assistance. These regulations may be viewed at:

<http://www.cclld.ca.gov/PG555.htm>.

Colorado:

Colorado banned the use of antifreeze in new sprinkler installations.

Delaware:

The Delaware Division of Long Term Care Resident Protection updated its web site to include access to Delaware's Assisted Living Facility (ALF) regulations and the list of currently licensed ALFs, and (as of December 2010) planned to have the web site include deficiency reports for ALFs.

Florida:

As a result of changes in 2010, a facility cannot require a licensed health care provider's order for all over-the-counter (OTC) products when a resident self-administers his or her own medications, or when staff provides assistance with self-administration of medications. A licensed health care provider's order is required when a licensed nurse provides assistance with self-administration or administration of medications, including OTC products.

Also, compliance with Level II (state and federal) background screening is required for staff and contractors providing personal services to residents prior to beginning employment.

Beginning July 2011, all assisted living facilities with 17 or more beds are required to have an automated defibrillator.

Idaho:

Idaho made the following changes to rules for Residential Care or Assisted Living Facilities on March 29, 2010:

- Exploitation was defined to include charging a resident for services/supplies not provided or not disclosed in the written admission agreement.
- Rules were added requiring the notification of the state Licensing and Certification department within three business days of a change in administrator.
- Extensive changes were made regarding admission agreements of private pay residents. The rules describe how a facility must clearly describe its billing practices and provide a method for residents to contest charges or rate increases.
- Rules were added allowing a facility to bill for personal furnishings and supplies of private pay residents, provided the facility provides a detailed itemization of items for which the resident will be charged. Likewise, rules were altered regarding what a facility may charge for furnishings and supplies and which must

be provided at no additional cost to the resident. For example, the facility may charge all residents for soap, shampoo, toothpaste, toothbrushes, etc., unless the resident chooses to provide his or her own.

- Rules were amended regarding notifying a resident of fee changes. If a resident requires additional care, notification must occur within five days of any fee change taking place.
- Call system rules were amended to include assurance that a resident's right to privacy will be protected.

Kansas:

The Kansas State Fire Marshal's Office updated several regulations to include K.A.R. 22-11-8. Life safety standards for Assisted Living and Residential Health Care Facilities were updated from the 1991 edition of the National Fire Protection Association (NFPA) 101 Life Safety Code to the 2006 edition of the NFPA 101 Life Safety Code.

Kentucky:

In July 2010, Kentucky's legislature passed sweeping changes to its assisted living statutes and in September the regulations were updated to reflect changes in law. Critical issues addressed in the new legislation (KRS 194A.700-729) include:

- Requiring functional needs assessments of assisted living residents to be completed at least annually;
- Redefining assistance with self-administration of medication;
- Allowing the resident to name a client-designated representative;
- Allowing a biennial certification review rather than an annual review;
- Setting forth minimum annual in-service education requirements for staff of an Assisted Living Community (ALC);
- Setting forth penalties for an ALC being issued more than two Statements of Danger on separate dates within a six-month period that are not withdrawn by the department;
- Defining a temporary condition; and
- Allowing an ALC to maintain assistance with self-administration of medication under the previous laws based on policy.

Louisiana:

In 2010, responsibility for the licensing and regulation of Adult Residential Care Homes/Facilities (Assisted Living Facilities, Personal Care Homes, and Shelter Care Homes) was transferred from the Department of Social Services to the Department of Health and Hospitals. Louisiana now has four levels of Adult Residential Care Providers (Assisted Living Facilities, Personal Care Homes, Shelter Care Homes, and Adult Residential Care Providers) licensed by the Department of Health and Hospitals.

Mississippi:

Legislation enacted in 2010 authorized the state Department of Health to revoke the license and require closure of any institution for the aged or infirm, including personal care homes and assisted living communities, to protect the health and safety of the residents of such institutions or the general public. The legislation also authorizes the department to apply any other remedy less than closure for this purpose.

Missouri:

In 2010, Missouri's legislature created a new category of administrator for Assisted Living Facilities and level two Residential Care Facilities.

New Jersey:

Legislation enacted in 2010 requires an assisted living residence or comprehensive personal care home that surrenders its license and promised not to discharge Medicaid residents to escrow funds to pay for care in an alternate facility.

New York:

In May 2010, the state Department of Health issued guidance to ensure adequate staffing and training for the care of persons with cognitive impairments.

Oklahoma:

In 2010, Oklahoma:

- Implemented legislation allowing assisted living facilities licensed to house six or fewer residents prior to July 1, 2008, to install a 13D or 13R fire sprinkler in lieu of meeting I-II sprinkler requirements, with approval of the municipal fire marshal or compliance with local codes.
- Added procedures for addressing abuse, neglect, and the misappropriation of a resident's property by requiring assisted living centers to have written policy statements and setting training criteria and timeframes for staff.

Oregon:

In 2010, Oregon developed new rules for the endorsement of Memory Care Communities, which were formerly known as Alzheimer's Care Units. To achieve endorsement, a community must meet underlying licensing for requirements for Assisted Living and Residential Care communities as well as the endorsement rules. Most Memory Care Communities are licensed as Residential Care. Endorsement rules focus

on person-centered care, consumer protection, staff training specific to caring for people with dementia, and enhanced physical plant and environmental requirements.

Pennsylvania:

Pursuant to legislation enacted in 2007, Pennsylvania's new assisted living regulations took effect January 18, 2011, thereby creating a second level of licensure alongside personal care homes. Some facilities currently licensed as personal care homes may meet the more stringent standards for assisted living residences, while others may not.

Rhode Island:

A July 2010 amendment to the Assisted Living Residence (ALR) law expanded the types of residents that may receive skilled nursing care or therapy and the length of time they may receive such services. Under the amendment, residents may receive daily therapy services and/or limited skilled nursing care services from a licensed health care provider for a condition that results from a temporary illness or injury for up to 45 days, subject to an extension of additional days as approved by the Department of Health, or if the resident is under the care of a licensed hospice agency provided the ALR assumes responsibility for ensuring that such care is received. As of February 2011, regulations implementing the new law had yet to be promulgated.

South Carolina:

In South Carolina, revised regulations took effect June 25, 2010. Changes include the following:

- A copy of the most recent report of the resident care focused inspection and the most recent general inspection conducted by the Department of Health and Environmental Control, including the facility response, shall be available in a conspicuous place in a public area within the facility.
- The Department specified certain conditions for which a facility may receive the most severe enforcement actions.
- A separate section was added to address the use of private sitters by residents in a facility.
- Minimum criteria were established for the frequency of staff documentation of residents' condition.
- Tuberculin skin testing procedures for *M. Tuberculosis* infections in staff and residents were completely rewritten to conform to CDC guidelines, and to include annual risk assessments and screening procedures.

Texas:

Regulatory and legislative changes in 2010 include the following:

- The nurse aide registry and employee misconduct registry must be checked for all employees upon hire, and annually thereafter. The results should be documented in the employee's personnel file. The facility is required to provide notification to an employee about the employee misconduct registry.
- The Type E licensure category was eliminated. Under new legislation, boarding homes may not provide personal care services, but are allowed to provide medication supervision with no state licensure. Cities/municipalities may choose to regulate boarding homes, but are not required to regulate them.
- The rule that allowed facility nurse employees to provide nursing services to residents for an acute episode was deleted. Facility nurses may only administer medications and provide personal care services. Nurses are not required in facilities. Required nursing services now must be provided under contract by an outside provider.
- The definition of "personal care services" was revised.
- New legislation allows facilities to request an "expedited life safety code inspection" for a fee.
- Rules were revised concerning requirements for a provisional license.
- The definition of a "controlling person" was revised; the rules clarify that neither a shareholder nor a lender of a publicly traded corporation is included in the definition.

Washington:

The state's boarding home regulations were updated effective Feb. 14, 2010. Changes include:

- Clarifying that boarding homes must fully disclose to residents the facility's policy on accepting Medicaid as a payment source;
- Updating the disqualifying crime list that prohibits a person from having unsupervised access to residents to include conviction of certain drug crimes;
- Clarifying tuberculosis screening requirements to be consistent with current standards; and
- Adding a liability insurance requirement to the rule.