

Maryland

Agency Department of Health, Office of Health Care Quality

Contact

E-mail

Web Site <https://health.maryland.gov/ohcq/Pages/home.aspx>

Opening Statement

The Maryland Department of Health (MDH), Office of Health Care Quality (OHCQ) licenses assisted living programs based on three levels of care provided. The regulations do not specify a minimum number of residents for licensure. However, assisted living facilities are considered a related institution in Maryland. Related institutions are defined as having two or more residents. An assisted living facility which is contemplating adding an Alzheimer's special care unit is required to notify OHCQ.

Licensure Term

Assisted Living Programs

Definition

An assisted living program is a residential- or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination that meets the needs of residents who are unable to perform, or who need assistance in performing activities of daily living (ADLs) or instrumental activities of daily living in a way that promotes optimum dignity and independence for the residents.

During the last regulatory update, two assisted living program definitions were removed from what is not considered an assisted living program:

- (1) emergency, transitional, and permanent housing arrangements for the homeless, where no assistance with ADLs is provided; and
- (2) emergency, transitional, and permanent housing arrangements for the victims of domestic violence.

The following definition for what is not considered an assisted living program was added: a Certified Adult Residential Environment Program that is certified by the Department of Human Resources under Article 88A, §140, Annotated Code of Maryland.

**Regulatory and
Legislative Update**

No recent changes to regulations or legislation pertaining to assisted living.

**Move-in Requirements
Including Required
Disclosures/Notifications**

All assisted living providers are required to complete an Assisted Living Disclosure Form, which must be included in all marketing materials and made available to consumers upon request. The form is reviewed during facility surveys, and providers must notify and file an amendment with the OHCQ within 30 days of changes in services. Written disclosure also must be made to the MDH and consumers by assisted living programs offering Alzheimer's special care units or programs.

Facility Scope of Care

Facilities may provide one of three levels of care: low, moderate, or high. The levels of care are defined by varying service requirements pertaining to health and wellness; assistance with functioning; assistance with medication and treatment; management of behavioral issues; management of psychological or psychiatric conditions; and social and recreational concerns. Under low and moderate levels of care, staff must assist with two or more ADLs.

If a facility wishes to continue to serve a resident requiring a higher level of care than that for which the facility is licensed for more than 30 days, the facility must obtain a resident-specific waiver. A waiver requires a showing that the facility can meet the needs of the resident and not jeopardize other residents. The licensee shall submit a waiver application as soon as program staff determine that the increased level of care of the condition requiring the waiver is likely to exceed 30 days. Waivers to care for residents at the moderate and high levels are limited to 50 percent of licensed beds. Waivers to exceed the high level are limited to 20 percent of licensed beds or up to 20 beds, whichever is less. If, at any time, a licensee wants to provide a higher level of care than that for which it is licensed, the licensee shall request authority from the department to change its licensure authority.

Limitations of Services

Facilities may not admit individuals who require more than intermittent nursing care; treatment of stage III or IV skin ulcers; ventilator services; skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or risk for, a fluctuating acute condition; monitoring of a chronic medical condition that is not controllable through readily available medications and treatment; treatment for an active, reportable communicable disease; or treatment for a disease or condition that requires more than contact isolation. In addition to these seven conditions, individuals may not be admitted if they are dangerous to self or others and are at high risk for health and safety complications that cannot be adequately managed. Facilities may request a resident-specific waiver for existing residents presenting with one of these conditions.

**Resident Assessment
Requirements and
Frequency**

A resident's service plan must be based on assessments of his/her health, function, and psychosocial status using the Resident Assessment Tool. Within 30 days before admission, the assisted living program must collect information about the potential resident's physical condition and medical status.

A full assessment must also be completed within 48 hours, but not later than required by the nurse practice act, after a significant change of condition and each non-routine hospitalization.

"Significant change of condition" means: a resident has demonstrated major changes in status that are not self-limiting or which cannot be resolved within 30 days; a change in one or more areas of the resident's health condition that could demonstrate an improvement or decline in the resident's status; and the need for interdisciplinary review or revision to the service plan. A significant change of condition does not include any ordinary, day-to-day fluctuations in health status, function, or behavior, or an acute short-term illness such as a cold, unless these fluctuations continue to recur.

When the delegating nurse determines in the nurse's clinical judgment that the resident does not require a full assessment within 48 hours, the delegating nurse shall:

- (1) document the determination and the reasons for the determination in the resident's record; and
- (2) ensure that a full assessment of the resident is conducted within seven calendar days.

A review of the assessment shall be conducted every six months for residents who do not have a change in condition. Further evaluation by a health care practitioner is required and changes shall be made to the resident's service plan, if there is a score change in any of the following areas:

- (1) cognitive and behavioral status;
- (2) ability to self-administer medications; and
- (3) behaviors and communication.

If the resident's previous assessment did not indicate the need for awake overnight staff, each full assessment or review of the full assessment shall include documentation as to whether awake overnight staff is required due to a change in the resident's condition.

Medication Management

The assisted living manager and all staff who administer medications must have completed the medication administration course taught by a registered nurse who is approved by the Board of Nursing.

**Staff Scheduling
Requirements**

An assisted living manager must arrange for a licensed pharmacist to conduct an on-site review of physician prescriptions, orders, and resident records at least every six months for any resident receiving nine or more medications, including over-the-counter and PRN medications. The regulation specifies what must be examined during the review and that the review must be part of the quality assurance review. There is also a requirement that all schedule II and III narcotics must be maintained under a double-lock system and staff must count controlled drugs before the close of every shift.

A staffing plan must be submitted to OHCQ which demonstrates that there will be on-site staff sufficient in number and qualifications to meet the 24-hour scheduled and unscheduled needs of the residents. When a resident is in the facility, a staff member shall be present. There are no staffing ratios. An alternate assisted living manager shall be present on site or available on call when the assisted living manager is unavailable.

An assisted living program shall provide awake overnight staff when a resident's assessment using the Resident Assessment Tool indicates that awake overnight staff is required. If a physician or assessing nurse, in his/her clinical judgment, does not believe that a resident requires awake overnight staff, the physician or assessing nurse shall document the reasons in the area provided in the Resident Assessment Tool which shall be retained in the resident's record.

Upon the written recommendation of the resident's physician or assessing nurse, the assisted living program may apply to the department for a waiver to use an electronic monitoring system instead of awake overnight staff.

**Administrator/Director
Education and Training
Requirements**

The assisted living manager must be at least 21 years of age and possess a high school diploma or equivalent and have sufficient skills, training, and experience to serve the residents in a manner that is consistent with the philosophy of assisted living (delineated in regulation). For a high level of care program, an assisted living manager must have a four-year, college-level degree; two years of experience in a health care related field and one year of experience as an assisted living program manager or alternate assisted living manager; or two years of experience in a health care related field and successful completion of an 80-hour assisted living manager training program. The 80-hour training program must be approved by the OHCQ and cover required content on aging, cognitive impairment, and dementias.

**Direct Care Staff
Education and Training**

Staff other than the manager and alternate manager must be at least 18 years of age unless licensed as a nurse or the age requirement is waived by MDH. Staff whose duties include personal care must complete a state-approved, five hours of training on cognitive impairment and mental illness within the first 90 days of employment. Staff whose job duties do not involve the provision of personal care services shall receive a minimum of two hours of training on cognitive impairment and mental illness within the first 90 days of employment. Staff must participate in an orientation program and ongoing training to ensure that residents receive services consistent with their needs.

Staff shall demonstrate competence to the delegating nurse before performing personal care services and may work for seven days before demonstrating such competency to provide personal care services if the employee is performing tasks accompanied by a certified nursing assistant, a geriatric nursing assistant, or an individual who has been approved by the delegating nurse.

At least two hours of ongoing training must be provided annually for those involved with the provision of personal care. For those not involved with the provision of personal care, at least one hour of training per year is required.

Quality Requirements

The assisted living program must develop and implement a quality assurance plan. The assisted living manager and the delegating nurse shall meet at least every 6 months to review the change in status of the program's residents; outcomes of pharmacy reviews; service plan requirements; and written recommendations or findings of the consultant pharmacist, as required by Regulation .29J of this chapter. The assisted living manager will document the proceedings of the meeting held.

**Infection Control
Requirements**

There are no specific infection control requirements detailed other than to follow stand precautions related to infection control.

**Emergency
Preparedness**

The assisted living program shall develop an emergency and disaster plan that includes procedures that shall be followed before, during, and after an emergency or disaster, including:

- (a) Evacuation, transportation, or shelter in-place of residents;
- (b) Notification of families and staff regarding the action that will be taken concerning the safety and well-being of the residents;
- (c) Staff coverage, organization, and assignment of responsibilities for ongoing shelter in-place or evacuation, including identification of staff members available to report to work or remain for extended periods; and

- (d) The continuity of services, including:
 - (i) Operations, planning, financial, and logistical arrangements;
 - (ii) Procuring essential goods, equipment, and services to sustain operations for at least 72 hours;
 - (iii) Relocation to alternate facilities or other locations; and
 - (iv) Reasonable efforts to continue care.
- (2) The licensee shall have a tracking system to locate and identify residents in the event of displacement, an emergency, or a disaster that includes at a minimum the:
 - (a) Resident's name;
 - (b) Time that the resident was sent to the initial alternative facility or location; and
 - (c) Name of the initial alternative facility or location where the resident was sent.
- (3) When the assisted living program relocates residents, the program shall send a brief medical fact sheet with each resident that includes at a minimum the resident's:
 - (a) Name;
 - (b) Medical condition or diagnosis;
 - (c) Medications;
 - (d) Allergies;
 - (e) Special diets or dietary restrictions; and
 - (f) Family or legal representative contact information.
- (4) The brief medical fact sheet for each resident shall be:
 - (a) Updated upon the occurrence of change in any of the required information;
 - (b) Reviewed at least monthly; and
 - (c) Maintained in a central location readily accessible and available to accompany residents in case of an emergency evacuation.
- (5) The licensee shall review the emergency and disaster plan at least annually and update the plan as necessary.
- (6) The licensee shall:
 - (a) Identify a facility, facilities, or alternate location or locations that have agreed to house the licensee's residents during an emergency evacuation; and
 - (b) Document an agreement with each facility or location.
- (7) The licensee shall:
 - (a) Identify a source or sources of transportation that have agreed to safely transport residents during an emergency evacuation; and

(b) Document an agreement with each transportation source.

(8) Upon request, a licensee shall provide a copy of the facility's emergency and disaster plan to the local emergency management organization for the purpose of coordinating local emergency planning. The licensee shall provide the emergency and disaster plan in a format that is mutually agreeable to the local emergency management organization.

(9) The licensee shall identify an emergency and disaster planning liaison for the facility and shall provide the liaison's contact information to the local emergency management organization.

(10) The licensee shall prepare an executive summary of its evacuation procedures to provide to a resident, family member, or legal representative upon request. The executive summary shall, at a minimum:

(a) List means of potential transportation to be used in the event of evacuation;

(b) List potential alternative facilities or locations to be used in the event of evacuation;

(c) Describe means of communication with family members and legal representatives;

(d) Describe the role of the resident, family member, or legal representative in the event of an emergency situation; and

(e) Notify families that the information provided may change depending upon the nature or scope of the emergency or disaster.

Medicaid Policy and Reimbursement

Maryland has a Section 1915(c) home and community-based services waiver, Home and Community-Based Options, that covers services in applicable assisted living programs. Participants must be assessed to need a nursing facility level of care based on a uniform medical assessment, meet financial eligibility requirements, and be aged 18 years old or older. They must be provided with 24-hour supervision, and facilities must employ a delegating nurse (a registered nurse) to visit every 45 days.

Life Safety Requirements

Facilities must abide by the National Fire Protection Association Life Safety Code 101 and must have hand extinguishers and an emergency plan known to all staff. Smoke detectors must be installed in all sleeping rooms, on each level of the dwelling including basements, and outside of each sleeping area, in the immediate vicinity of the sleeping rooms. The plan for fire evacuation must be posted on all floors. Fire drills must be conducted. The plan for fire evacuation must be posted on all floors.

Fire drills must be conducted quarterly on every shift and documented. A disaster drill must be conducted and written up annually. Table-top drills are acceptable if it can be shown that actually performing the drill would unduly risk the health and safety of participants.

The regulations require emergency preparedness plans to address the evacuation, transportation, or shelter in place of residents; notification to families, staff, and the OHCQ 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 need not be guaranteed).

Assisted living programs providing services to 50 or more individuals must have on premises an emergency back-up generator in working condition and capable of running for 48 hours. Exemptions are allowed for facilities that can demonstrate financial hardship and waivers for facilities connected by a corridor to a facility with a generator.

Citations

Code of Maryland Regulations. (2021) Title 10. Maryland Department of Health, Part 1, Subtitle 07. Hospitals. Chapter 10.07.14. Assisted Living Programs.
<http://mdrules.elaws.us/comar/10.07.14>

Department of Health. (n.d.) Home and Community-Based Services.
<https://mmcp.health.maryland.gov/waiverprograms/pages/home.aspx>

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<https://mgaleg.maryland.gov/mgaweb/Legislation/Details/hb1034?ys=2022RS>

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<https://mgaleg.maryland.gov/mgaweb/Legislation/Details/SB0720?ys=2022RS>

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