

West Virginia

Agency Department of Health and Human Resources, Bureau for Public Health, Office of Health Facility Licensure and Certification

Contact Kelli Cooper

E-mail Kelli.R.Cooper@wv.gov

Web Site <http://ohflac.wvdhhr.org/index.html>

Opening Statement

Assisted living is regulated by the Department of Health and Human Resources, Office of Health Facility Licensure and Certification. There are two types of licensed residential care settings in West Virginia: an assisted living residence (ALR) and a residential care community (RCC). The primary difference between ALRs and RCCs is that residents in the latter must be capable of self-preservation in an emergency. The following requirements apply to both types of facilities unless otherwise noted.

A separate license must be obtained for a facility to offer specialized units for persons with Alzheimer's disease or other types of dementia. Such facilities must be licensed as either an ALR or a skilled nursing facility. Licensed facilities that do not market themselves as offering Alzheimer's/dementia special care units may serve residents with early dementia symptoms.

There have been no recent legislative or regulatory updates affecting assisted living residences and residential care communities in the last year.

Licensure Term

Assisted Living Residences (ALR)
Residential Care Communities (RCC)

Definition

ALR: Any living facility or place of accommodation in the state, however named, available for four (4) or more residents, that is advertised, offered, maintained or operated by the ownership or management, for the express or implied purpose of providing personal assistance, supervision, or both, to any residents who are dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing care.

- Small Assisted Living Residence - A bed capacity of four (4) to sixteen (16).

- Large Assisted Living Residence - A bed capacity of seventeen (17)

or more.

RCC: Any group of seventeen (17) or more residential apartments, however named, which are part of a larger independent living community, for the express or implied purpose of providing residential accommodations, personal assistance and supervision on a monthly basis to seventeen (17) or more persons who are or may be dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self preservation and are not bedfast. Each apartment in a residential care community shall be at least three hundred square feet in size, have doors capable of being locked and contain at least: (1) One bedroom; (2) one kitchenette that includes a sink and a refrigerator; and (3) one full bathroom that includes a bathing area, toilet and sink. Services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential care community has a backup power generator.

**Regulatory and
Legislative Update**

There have been no recent legislative or regulatory updates affecting assisted living residences and residential care communities.

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

ALR: The licensee shall enter into a written contract with the resident on admission to the residence that specifies, at a minimum, the following information:

- The type of resident population that the residence is licensed to serve and will serve;
- The health and nursing care services that the residence will provide to meet the resident's needs, including cardiopulmonary resuscitation, and how they will be provided;
- An annual or monthly contract price, full disclosure of all costs including what changes in care needs will result in increases, additions or modifications to the costs, the refund policy, and an assurance that the resident shall not be held liable for any cost that was not disclosed;
- Discharge criteria, including notification policies;
- How to file a complaint;
- Medication storage, handling, distribution, and disposition, and responsibility for payment;
- Management of residents' funds; and
- Whether or not the residence has liability insurance coverage.

The licensee shall provide a copy of the contract to each party in the contract and maintain a copy of the contract on file in the residence. If the existing contract does not meet the requirements of this rule,

the licensee shall provide current residents with a new or updated contract that includes the required provisions within 90 days of the effective date.

At the same time as providing the contract, the licensee shall also provide the resident with the following information:

- House rules governing resident behavior and responsibilities, including the residence's smoking policy;
- The resident's bill of rights;
- How the resident's personal property will be protected from loss and theft;
- The requirements for medical examinations and treatment orders;
- How the resident will be assisted in making appointments for medical, dental, nursing, or mental health services, and how transportation to and from these services will be arranged; and
- How to access the residence's policies and procedures.

RCC: The relationship of a resident to the residential care community shall be covered by a written contract entered into at the time of or prior to the individual's admission. The contract shall specify the following information:

- The residential care community's admission, retention and discharge criteria;
- Written assurance of the services that the residential care community will provide to meet the individual's needs;
- Full disclosure of all costs, an annual or monthly contract price, refund policy and an assurance that residents shall not be held liable for any cost that was not disclosed;
- How health care will be arranged or provided;
- The complaint process;
- How prescribed medications are obtained, and who is responsible for payment; and
- The storage, administration and disposal of medications.

Each party to the contract shall have a copy of the contract. If a current resident's existing contract does not meet the requirements of this rule, the resident shall be provided with new or updated contract within fourteen (14) days of the effective date. Thirty (30) days prior to any increases, additions, or other modifications of the rates, the licensee shall give written notice of the proposed changes to residents.

The licensee shall inform and document notifying the resident of how to access the following information at the time of the

agreement:

- Information and referral services regarding the resident's utilization of social, recreational, and vocational activities within the residential care community;
- How the resident's personal property will be protected from loss and theft;
- How the resident will be assisted in making appointments for medical, dental, nursing or mental health services, and how transportation to and from these services will be arranged;
- Policies and procedures for emergency situations that affect the well-being of residents, including, but not limited to the following: life-threatening medical emergencies' (including whether CPR will be provided), fires, natural disasters, severely inclement weather, industrial accidents, major incidents, a missing resident and immediate or serious threats;
- The responsibility for required medical examinations and treatment orders; policies regarding room changes, retention during temporary illness or a significant change in resident status, transfers and discharges, and the resident's and the licensee's transfer and discharge notification responsibilities;
- House rules governing resident behavior and responsibilities; and
- A resident's bill of rights which is consistent with this rule.

Facility Scope of Care

ALR: Facilities may provide assistance with activities of daily living and/or supervision and have the option of providing limited and intermittent nursing services. They may also make arrangements for a resident to use a hospice or a Medicare-certified home health agency.

RCC: Communities may provide assistance with activities of daily living and/or supervision and have the option of providing limited and intermittent nursing services.

Limitations of Services

ALR: The assisted living residence may not admit individuals requiring ongoing or extensive nursing care and shall not admit or retain individuals requiring a level of service that the residence is not licensed to provide or does not provide.

If a resident has care needs that exceed the level of care for which the residence is licensed or can provide, the licensee shall inform the resident, or his or her legal representative in writing, of the need to move to a health care facility that can provide the needed level of care.

RCC: Only individuals capable of self-preservation by virtue of his or her ability to follow directions and, with prompting if necessary, to

**Resident Assessment
Requirements and
Frequency**

take appropriate action for self-preservation under emergency conditions may be admitted to a residential care community.

An individual requiring ongoing or extensive nursing services or requiring a level of services which the residential care community is not licensed or does not provide may not be admitted.

ALR: Each resident must have a written, signed, and dated health assessment by a physician or other licensed health care professional authorized under state law to perform this assessment not more than 60 days prior to the resident's admission, or no more than five working days following admission, and at least annually post-admission. The admission and annual health assessment shall include screening for tuberculosis and other communicable diseases if indicated by exposure, prevalence, or risk according to current medical practice to congregate living situations

Within five days of admission, each resident shall have an individualized functional needs assessment completed in writing by a licensed health care professional which is maintained in the resident's medical record. At a minimum, the resident's assessment shall include a review of health status and functional, psycho social, activity, and dietary needs.

The functional needs assessment and service plans reflect the resident's current needs and are updated annually or as indicated by a significant change in the resident's condition.

RCC: Each resident has a written, signed and dated health assessment by a licensed physician or other licensed health care professional authorized to perform such assessments under State laws and rules not more than sixty (60) days prior to the resident's admission, or no more than five (5) working days following admission, and at least annually thereafter. The admission and annual health assessment shall include screening for tuberculosis and other communicable diseases if indicated by exposure, prevalence or risk according to current medical practice in congregate living situations

Within thirty (30) days of admission, every resident shall have an individualized functional needs assessment completed in writing by a licensed health care professional. At a minimum, the resident's assessment shall include a review of health status and functional, psychosocial, activity and dietary needs.

The assessment and service plan shall reflect the resident's current needs and therefore are updated annually and as indicated by a significant change in the resident's condition.

Medication Management

ALR: The facility may provide administration of medication to residents who have a prescriber's orders, by a licensed health care professional or by an approved Medication Assistive Personnel (for which specific training and testing is required) can administer medications in the facility.

RCC: The residence may administer medications and assist with self-administration of medications according to prescriber's orders.

Staff Scheduling Requirements

ALR: have at least one direct care staff person 24 hours a day, who can read and write and have a sufficient number of qualified employees must be on duty to provide residents with all the care and services they require.

- Day shift - In addition to the one direct care staff person on the day shift, the residence shall have one direct care staff on the day shift for each 10 residents identified on their needs assessments to have two or more of the following care needs: dependence on staff for eating, toileting, ambulating residents from one location to another, bathing, dressing, repositioning, oral hygiene, personal grooming, or one or more inappropriate behaviors that reasonably require additional staff to control, such as sexually acting out, stripping in public settings, refusing basic care, destroying property, or injurious behavior to self or others (hereinafter referred to as "special care needs");
- Evening shift - In addition to the one direct care person on the evening shift, the residence shall have at least one additional direct care staff on the evening shift for each 15 residents identified on their functional needs assessments to have two or more special care needs;
- Night shift - In addition to the one direct care person on the night shift, the residence shall have at least one additional direct care staff on the night shift for each 18 residents identified on their functional needs assessments to have two or more special care needs.

One employee who has current first aid training and current CPR training, as applicable, must be on duty at all times.

RCC: Each residential care community shall have a minimum of one (1) residential staff twenty-four (24) hours per day and shall have a sufficient number of qualified employees on duty to provide the residents with all of the care and services they require.

Awake staff shall be present in the residential care community during normal resident sleeping hours when residents require supervision during sleeping hours or are in need of limited and intermittent nursing services unless all residents are certified by a physician or psychologist as not being in need of sleep time supervision and they are not in need of limited and intermittent nursing services.

A multi-story residential care community shall maintain at least one (1) awake staff per story while residents are sleeping (some exemptions may be applied)

**Administrator/Director
Education and Training
Requirements**

Administrator/Director Education and Training Requirements^{ALR}:

- Large ALRs - the administrator must be at least 21 years of age and hold an associate degree or its equivalent in a related field.
- Small ALRs - the administrator must be 21 years of age and have a high school diploma or GED.

The administrator of an assisted living residence must have a background check.

The administrator must have eight hours of training annually.

RCC: The administrator must be at least 21 years of age and has an associate degree or its equivalent in a related field.

The administrator of a residential care community shall have a personal history which does not contain the following: evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health or social care facility or service organization, or in the care of dependent persons; and conviction of crimes relevant for the provision of care to a dependent population as evidenced by a criminal investigative background check.

The administrator must have 10 hours of training annually, and the training must be related to the administration and operation of RCCs.

**Direct Care Staff
Education and Training**

ALR:

- Training to new employees prior to scheduling them to work unsupervised, within the first 15 days of employment, in accordance with a written plan orientation and training should include, at a minimum, emergency procedures and disaster plans; the residence's policies and procedures; resident rights; confidentiality; abuse prevention and reporting requirements; the ombudsmen's role;

complaint procedures; specialty care based on individualized resident needs and service plans; the provision of group and individual resident activities; and infection control.

- Training to all new employees within 15 days of employment and annually thereafter on Alzheimer's disease and related dementias. The licensee shall maintain an employee training record. The training shall be a minimum of two hours in duration and shall include all the following: basic understanding of Alzheimer's disease and other dementias; communication approaches and techniques for use when interacting with persons with Alzheimer's disease or a related dementia; prevention and management of problem behaviors; and activities and programming appropriate for these individuals.

- In-service training annually to all staff on the topics of resident rights, confidentiality, abuse prevention and reporting requirements, the provision of resident activities, infection control, fire safety and evacuation plans, and specialty care based on individual resident needs and service plans.

RCC:

- Training to new employees within the first twenty-four (24) hours of association with the residential care community in emergency procedures and disaster plans, including the following: evacuation procedures, procedures to report a missing resident, medical emergencies, accidents, fire, natural disasters or other emergencies.

- Maintain a written plan of orientation and training for employees. The training shall be provided within the first fifteen (15) days of employment and shall include the following:

- o Policies and procedures;

- o The rights and responsibilities of residents including protection of resident privacy and confidentiality;

- o Complaint procedures;

- o Procedures and agencies available in instances of abuse, neglect, and mistreatment: the State adult protective services agency, including its toll-free hot line number; the State licensure and certification agency, including its telephone number; the state bureau of senior services, including its telephone number; and various other concerned advocacy and protection organizations;

- o The care of aged, infirm or disabled adults with consideration for individual capabilities and needs;

- o Personal assistance procedures as needed for resident care, including at a minimum, personal grooming care, personal hygiene care, nutritional services, and signs and symptoms of alteration in skin integrity;

- o Specific duties and responsibilities of the residential staff for

- assisting current residents;
- o Cardiopulmonary resuscitation (CPR), as applicable, and first aid; and
- o Infection control.
- Ongoing in-service training annually in these areas:
 - o Resident rights and confidentiality;
 - o Abuse, neglect, mistreatment, and procedures to prevent the occurrence of those incidents;
 - o Emergency care of residents (first aid and as applicable, CPR) and emergency plans for the residential care community, including fire safety and evacuation plans;
 - o The responsibilities of the residential staff for assisting residents (i.e., individualized service plans, activity programs, etc.); and
 - o Infection control.

Quality Requirements

ALR and RCC: There is no specified quality requirements detailed.

Infection Control Requirements

ALR and RCC: They must provide and maintain a training record for staff on the topic of infection control.

Licensees must provide all resident care and services in accordance with current standards of practice using appropriate infection control techniques.

Emergency Preparedness

ALR: The assisted living residence shall have a written disaster and emergency preparedness plan with procedures to be followed in any emergency that could severely affect the operation of the residence.

- The disaster and emergency preparedness plan shall have procedures with specific tasks and responsibilities for each class of employee in the event of missing residents, high winds, tornadoes, floods, bomb threats, utility failure, and severe winter weather.
- The disaster and emergency preparedness plan shall include a minimum of an emergency alternate shelter agreement, an emergency transportation policy, and a three-day food and drinking water supply.
- The licensee shall provide copies of the disaster and emergency preparedness plan at all staff stations; and staff shall know the location of the plan at all times.
- The licensee or administrator shall review and update the disaster and emergency preparedness plan on an annual basis and shall sign and date the plan to verify review.
- The licensee shall conspicuously post emergency call information near each telephone in the residence, excluding telephones in residents' rooms, with the telephone numbers of the fire

department, the police, an ambulance service, and other appropriate emergency services, and key staff telephone numbers.

- The licensee shall rehearse the disaster and emergency preparedness plan with all staff from each shift annually and shall keep documentation of the rehearsal that includes verification of participation by each employee's signature and a critique of the rehearsal by the licensee or administrator.
- The licensee shall within 24 hours of admission, show all new residents how to evacuate the residence in an emergency, and shall document this in the residents' records.

RCC: The residential care community shall have a written disaster and emergency preparedness plan which states procedures to be followed in the event of an internal or external disaster or emergency which could severely affect the operation of the residential care community.

- The disaster and emergency preparedness plan shall have procedures for the following situations at minimum and shall identify specific tasks and responsibilities for all employees in the event of the following: missing residents; high winds; tornadoes; floods; bomb threats; utility failure; and severe winter weather.
- The disaster and emergency preparedness plan shall include at least an emergency water agreement; an alternate shelter agreement; an emergency transportation policy; and an emergency food supply list and menu which will provide nutrition for all persons residing in the residential care community for a minimum of seventy-two (72) hours.
- The licensee shall obtain the assistance of qualified fire safety, emergency response teams and other appropriate experts in developing and maintaining the disaster and emergency preparedness plan. Documentation by the expert shall be maintained in the residential care community.
- The licensee shall provide the local fire department with a floor plan and with the opportunity to become familiar with the residential care community.
- The residential care community shall have written plans and procedures for transferring casualties and uninjured residents. These procedures shall include the transfer of pertinent resident records including identification information, diagnoses, allergies, advanced directives, medications and treatments, and any other records needed to ensure continuity of care.
- There shall be copies of the disaster and emergency preparedness plan at all staff stations or emergency control stations. The disaster and emergency preparedness plan shall be located in an area that allows visual contact at all times. Staff shall know the location at all

times.

- The disaster and emergency preparedness plan shall be reviewed and updated by the administrator or his or her designee on an annual basis and signed and dated to verify review.
- Emergency call information shall be conspicuously posted near each telephone in the residential care community, exclusive of telephones in resident rooms. This information shall include at least the following:
 - oThe telephone numbers of the fire department, the police, an ambulance service and other appropriate emergency services;
 - oKey personnel telephone numbers, including at least the following: the administrator; physician (if applicable); or the nurse on call (if applicable); and
 - oThe names and telephone numbers of all other personnel to be called in case of fire or emergency.
- Simple floor plans showing the location of exits, fire alarm pull stations, fire extinguishers, and fire fighting equipment shall be posted on all floors and in each separate wing.
- Within twenty-four (24) hours of admission, the disaster and emergency preparedness plan procedures shall be clearly communicated by the staff to the resident and documented.
- The disaster and emergency preparedness plan shall be rehearsed by all personnel from all shifts once yearly, and the rehearsals shall be documented in the residential care community's records.

Medicaid Policy and Reimbursement

Medicaid does not provide a waiver for assisted living residence or residential care communities. Medicaid only provides medical care in institutional settings, such as nursing homes, to individuals who otherwise may not be able to afford care.

Life Safety Requirements

All ALRs and RCCs with four or more beds must comply with state fire commission rules and must have smoke detectors, fire alarm systems, and fire suppression systems.

All facilities must have smoke detectors in all corridors and resident rooms. Assisted living communities with permanently installed fuel-burning appliances or equipment that emits carbon monoxide as a byproduct of combustion are required to have carbon monoxide detectors.

Facilities must have manual pull stations and a fire alarm system.

Citations

West Virginia Administrative Code. (n.d.) Chapter 16: Public Health, Article 5N: Residential Care Communities.
<https://code.wvlegislature.gov/16-5N-3/>

West Virginia Administrative Code. (2019) Title 64, Series 14, Assisted Living Residences.
<https://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?document=16875>

West Virginia Administrative Code. (1999) Title 64, Series 75, Residential Care Communities.
<https://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?document=2879>

West Virginia Administrative Code. (2006) Title 64, Series 85, Alzheimer's/Dementia Special Care Units and Programs.
<https://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?document=2894>

West Virginia Code. (2003) Chapter 16, Article 5D: Assisted Living Residences.
<http://www.wvlegislature.gov/wvcode/chapterentire.cfm?chap=16&art=5D§ion=1>

West Virginia Code. (n.d.) Chapter 16, Article 49: West Virginia Clearance for Access: Registry and Employment Screening Act. <http://www.wvlegislature.gov/wvcode/code.cfm?chap=16&art=50>

West Virginia Department of Health and Human Resources. (n.d.) Bureau for Family Assistance. Medicaid and Medicaid for Long Term Care. <https://dhhr.wv.gov/bfa/programs/Pages/Medicaid.aspx>