

Maryland

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Licensure Term Assisted Living Programs

Opening Statement The Maryland Department of Health (MDH), Office of Health Care Quality (OHCQ) licenses three types of assisted living programs based on level 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.

Legislative and Regulatory Update During the 2018 legislative session, the Maryland General Assembly passed SB108, which eliminates all licensing fees and license renewal requirements for multiple provider types, including assisted living programs. The legislation also allows the Secretary of Health to issue probationary licenses for a period of time specified by the department in regulations, as opposed to the previous requirement that probationary licenses could only be issued for a period of less than 2 years.

There are no finalized regulatory updates affecting assisted living. However, the regulations have been under review and revised regulations are expected soon.

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 ADLs or instrumental activities of daily living in a way that promotes optimum dignity and independence for the residents.

Updated regulations removed two assisted living program definitions 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. They also add the following definition for what is not considered an assisted living program: a Certified Adult Residential Environment Program that is certified by the Department of Human Resources under Article 88A, §140, Annotated Code of Maryland.

Disclosure Items

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. (See Requirements for Serving Persons with Dementia.)

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.

Third Party Scope of Care

Home health agencies may provide services under contract with residents.

Admission and Retention Policy

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

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: (a) document the determination and the reasons for the determination in the resident's record; and (b) 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: (a) cognitive and behavioral status; (b) ability to self-administer medications; and (c) 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.

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.

Square Feet Requirements

Private rooms must provide a minimum of 80 square feet of functional space and double occupancy rooms must provide a minimum of 120 square feet per resident. Functional space does not include toilet rooms and bathing facilities, closets, entrance vestibules, or the arc of any door that opens into the room.

Residents Allowed Per Room

A maximum of two residents is allowed per resident unit; however, this limit may be waived by the state agency for existing facilities that have previously had this waived.

Bathroom Requirements

Toilets with latching hardware must be provided to residents for privacy. Facilities must have a minimum ratio of one toilet to every four residents. Buildings with nine or more residents must have a minimum ratio of one toilet to four occupants on each floor where a resident is located. There must be a minimum of one bathtub or shower for every eight residents.

Life Safety

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.

Unit and Staffing Requirements for Serving Persons with Dementia

An assisted living program with an Alzheimer's special care unit or program is required to send OHCQ a written description of the special care unit or program at the time of initial licensure. The program must submit a written description of any changes that have been made. Facilities are currently required to submit an Alzheimer's Disclosure Statement if they have a specific unit or the entire facility cares for only Alzheimer's residents. Specific information must be disclosed to the family or party responsible for any resident prior to admission or to any person on request. The description of the Alzheimer's special care unit or program shall include a statement of philosophy or mission; staff training and staff job titles; any services, training, or other procedures that are over and above those that are provided in the existing assisted living program; and any other information that the department may require.

Staffing Requirements

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.

An assisted living program shall have a signed agreement with a registered nurse for services of a delegating nurse and delegation of nursing tasks. If the delegating nurse is an employee of the assisted living program, the employee's job description may satisfy this requirement. The delegating nurse's duties are described in the regulations.

An assisted living program shall provide on-site nursing when a delegating nurse or physician, based upon the needs of a resident, issues a nursing or clinical order for that service. If an assisted living manager determines that a nursing or clinical order should not or cannot be implemented, the manager, delegating nurse, and resident's physician shall discuss any alternatives that could safely address the resident's needs. The assisted living manager shall document in the resident's record this discussion and all individuals who participated in the discussion.

Administrator Education/Training

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 level 3 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.

Staff Education/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 the Department. 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.

**Entity Approving
CE Program**

MDH must approve the continuing education.

**Medicaid Policy and
Reimbursement**

The Medicaid Program has a home and community-based services waiver that covers services in assisted living. Participants must be assessed to be level II or III and must be 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.

Citations

Annotated Code of Maryland, Title 10, Subtitle 07, Chapter 14:
Assisted Living Programs Authority: Health-General Article, Title 19,
Subtitle 18.

<http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.07.14>

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

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