

New York

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Licensure Term Adult-Care Facilities, Adult Homes, Enriched Housing Programs, and Assisted Living Residences

Opening Statement In New York, adult-care facilities are the settings where supervision and personal care are provided to persons with functional and/or cognitive impairments. The Department of Health licenses three types of adult-care facilities that provide a continuum of long-term residential care for seniors: adult homes (lowest level of care), enriched housing programs, and assisted living residences for adults (highest level of care). In 2004, legislation passed that created a new structure of adult care in New York. The system can be viewed as a continuum across the three types of adult-care facilities, and it is the provider's option to determine the level within the continuum at which they would like to operate.

Licensed adult homes and enriched housing programs have similar provisions except that enriched housing programs require private resident units and do not have to offer more than one meal per day. Assisted living residences offer a higher level of care. Any facility meeting the definition of assisted living residence must have or obtain an adult home or enriched housing program license.

Operators may also be certified as special needs assisted living to provide dementia care, or as enhanced assisted living to support aging in place.

The state has additional requirements for the provision of and payment for assisted living program services for Medicaid beneficiaries.

Legislative and Regulatory Update

There are no legislative changes affecting assisted living.

The state is in the process of reviewing and revising regulations that will affect assisted living. Effective May 25, 2018, the state amended the regulations applicable to all adult care facilities that prohibits a

provider's exclusion of an applicant for admission on the sole basis that such individual primarily uses a wheelchair for mobility (see sections 487.4, 488.4, 489.7, 490.4 and 494.4 and of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York).

Definition

Adult-care Facility: A family-type home for adults, a shelter for adults, a residence for adults or an adult home, which provides temporary or long-term residential care and services to adults who—by reason of physical or other limitations associated with age, physical or mental disabilities or other factors—are unable or substantially unable to live independently. These adults do not require continual medical or nursing care.

Adult Home: A type of adult-care facility that provides long-term residential care, room, board, housekeeping, personal care, and supervision to five or more adults unrelated to the operator.

Enriched Housing Program: A type of adult-care facility that provides long-term residential care to five or more adults (generally 65 years of age or older) in community-integrated settings resembling independent housing units and provides or arranges for room, board, housekeeping, personal care, and supervision. Units in these homes have a kitchenette.

All operators must have either an adult home license or an enriched housing program.

Assisted Living and an Assisted Living Residence: A type of adult-care facility that is licensed as an adult home or enriched housing program and provides the highest level of care. These operators may also be certified as special needs assisted living to provide dementia care, or as enhanced assisted living to support aging in place. These homes provide or arrange for housing, on-site monitoring, and personal care and/or home care services, either directly or indirectly, in a homelike setting for five or more adults unrelated to the assisted living provider. An assisted living operator must provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence, and privacy in the least restrictive and most homelike setting consistent with the resident's preferences and physical and mental status.

Enhanced Assisted Living or Enhanced Assisted Living Residence: A certification issued by the Department of Health and that may be obtained for either a portion of or an entire residence. The certification authorizes an assisted living residence to provide "aging

in place" by retaining residents who desire to continue to live in that residence and who:

- (1) Are chronically chairfast and unable to transfer, or chronically require the physical assistance of another person to transfer;
- (2) Chronically require the physical assistance of another person in order to walk;
- (3) Chronically require the physical assistance of another person to climb or descend stairs;
- (4) Are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or
- (5) Have chronic unmanaged urinary or bowel incontinence.

Special Needs Assisted Living: A certification issued by the Department of Health that allows a facility to serve individuals with special needs, such as dementia or cognitive impairments. A facility must submit to the Department a special needs plan demonstrating how the special needs of the residents will be safely and appropriately met. The Department of Health has developed guidance specifically to ensure adequate staffing and training.

Assisted Living Program: Separate from the assisted living residence classification is the assisted living program, which serves private pay and Medicaid eligible individuals who are medically eligible for nursing home placement, but who are not in need of the highly structured, medical environment of a nursing facility and whose needs could be met in a less restrictive and lower cost residential setting. Assisted living programs are responsible for providing residents with long term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services. The programs are required to hold dual licenses/certification as an adult home or enriched housing program and as a licensed home care services agency (LHCSA), long term home health care program, or certified home health agency (CHHA). If the assisted living program is licensed as a LHCSA, it must contract with a CHHA for provision of skilled services to its residents. Assisted living programs may receive Medicaid reimbursement for the health care services provided, whereas an assisted living resident may not.

Disclosure Items

When any marketing materials or a copy of the residency agreement is distributed, the operator must provide the following on a separate

information sheet:

(1) The consumer information guide developed by the Commissioner of the Department of Health. Residents and potential residents may be referred to the Department's website, but a hard copy must be provided by the facility if requested.

(2) A statement listing the residence's licensure and if the residence has an enhanced assisted living and/or special needs enhanced assisted living certificate, and the availability of enhanced and/or special needs beds.

(3) Specific ownership information related to entities that provide care, material, equipment, or other services to the residents.

(4) A statement regarding the ability of residents to receive services from providers with whom the operator does not have an arrangement.

(5) A statement that residents have the right to choose their health care providers.

(6) A statement regarding the availability of public funds for payment for residential, supportive, or home health services, including the availability of Medicare for coverage of home health services.

(7) The toll free number for the Department of Health for complaints regarding home care services and services provided by the assisted living operator.

(8) Information regarding the availability of ombudsman services and the telephone numbers of state and local ombudsmen.

Facility Scope of Care

Adult Home and Enriched Housing Program: At a minimum, must provide supervision, personal care, housekeeping, case management, activities, food service, and assistance with medication.

Assisted Living Residence: Provides daily food service, 24-hour on-site monitoring, case management services, and the development of an individualized service plan for each resident.

Certified Enhanced Assisted Living Residence: May allow residents to age in place when the provider, the resident's physician, and, if necessary, the resident's licensed or certified home care agency agree that the additional needs of the resident can be safely met.

Third Party Scope of Care

Adult Home and Enriched Housing Program: Facilities must access and cooperate with external service providers on behalf of residents who need services not provided by the home or program.

Assisted Living Residence: Unless the facility is certified to provide enhanced or special needs care, it must arrange for any needed health care services to be provided by a home care services agency. Residents may contract with a home health agency or a long-term home health care program of their choice.

Admission and Retention Policy

Residents who have stable medical conditions and are capable of self-preservation with assistance may be admitted. Regulations specify when persons may not be admitted, including but not limited to people: who need continuous nursing care; are chronically bedfast; or are cognitively, physically, or mentally impaired to the point that the resident's safety or safety of others is compromised. No adult home with a capacity of 80 or greater may admit or retain more than 25 percent census of residents with serious mental illness.

Certified Enhanced Assisted Living Residence: A resident in need of 24-hour skilled nursing care or medical care may continue residency when all of the following conditions are met:

- (1) The resident in need of 24-hour skilled care hires appropriate nursing, medical, or hospice staff to meet his or her needs;
- (2) The resident's physician and home care services agency determine and document that the resident can be safely cared for in the residence;
- (3) The assisted living provider agrees to retain the resident and coordinate the care for all providers; and
- (4) The resident is otherwise eligible to reside at the residence.

Resident Assessment

Adult Home: A medical evaluation and an interview between the administrator (or a designee) and the resident or the resident's representative must be conducted. In the event that a proposed resident has a known history of chronic mental disability, or the medical evaluation or resident interview suggests such disability, then a mental health evaluation must be conducted.

Enriched Housing Program: Prior to admission, a functional assessment must be completed on a form prescribed or approved by the Department. Each functional assessment must address activities of daily living, instrumental activities of daily living, sensory

impairments, behavioral characteristics, personality characteristics, and daily habits. The functional assessment, a medical assessment and a mental health evaluation if needed must be conducted when a change in a resident's condition warrants and no less than once every 12 months.

Assisted Living Residence: Each assisted living resident will have an individualized service plan (ISP) developed when they move into a residence. The ISP is developed jointly by the resident, the resident's representative if applicable, the assisted living operator, a home care agency (as determined by the resident's physician), and in consultation with the resident's physician. The ISP must address the medical, nutritional, rehabilitation, functional, cognitive, and other needs of the resident. The ISP must be reviewed and revised at least every six months or when required by the resident's changing care needs.

Medication Management

Assistance with self-administration of medication is permitted in facilities. This includes prompting, identifying the medication for the resident, bringing the medication to the resident, opening containers, positioning the resident, disposing of used supplies, and storing the medication.

Square Feet Requirements

Adult Home: May provide either single- or double-occupancy resident units. Single bedrooms shall have a minimum floor area of 100 square feet and double bedrooms shall have a minimum floor area of 160 square feet, exclusive of foyer, wardrobe, closets, lockers and toilet rooms.

Enriched Housing Program: Must provide single-occupancy units, unless residents want to share. Single bedrooms must have a minimum floor area of 85 square feet and double bedroom must have a minimum floor area of 140 square feet, exclusive of foyer, wardrobe, closets, lockers and toilet rooms.

Residents Allowed Per Room

A maximum of two residents is allowed per resident unit.

Bathroom Requirements

Adult Home: Must provide at least one toilet and lavatory for every six residents and one tub/shower for every 10 residents.

Enriched Housing Program: Must provide one toilet, lavatory, shower, or tub for every three residents.

Assisted Living Residence: None specified

Life Safety

Adult Home and Assisted Living Residence for Adults:

(1) Regulations require an automatic sprinkler system throughout in buildings housing 25 or more residents;

(2) The Building Code of New York State (modeled after the International Building Code) requires an automatic sprinkler system in accordance with the applicable occupancy group designated for the adult-care facility;

(3) Regulations require a supervised smoke detection system installed throughout the building; and

(4) Regulations require all fire protection systems required to be directly connected to the local fire department or to a 24/7-attended central station.

Enriched Housing Program: The state building code requires the installation of automatic sprinkler systems, detection systems, and fire alarm and early warning systems in accordance with the applicable occupancy group designated for the adult-care facility.

The state has additional requirements for assisted living programs.

Unit and Staffing Requirements for Serving Persons with Dementia

Operators may be certified as special needs assisted living to provide dementia care. Dementia units must be designed as self-contained units. Fully locked facilities are prohibited, but units must have a delayed-egress system on all external doors as well as window stops and enclosed courtyards. Facilities must meet additional fire safety rules.

Any adult-care facility with approved dementia units is required to provide staff training in characteristics and needs of persons with dementia, including behavioral symptoms, and mental and emotional changes. The training should include methods for meeting the residents' needs on an individual basis. Further, in order to obtain approval for a special needs assisted living residence, an operator must submit a plan to the Department which must include not only proposed staffing levels, but also staff education, training, work experience, and professional affiliations or special characteristics relevant to the population the residence is intending to serve (including Alzheimer's or other dementias).

Staffing Requirements

Adult Home: An administrator must be employed to be directly accountable for operating and maintaining the facility in compliance with applicable requirements. Facilities must have a case manager and staffing sufficient to provide the care needed by residents. The regulations specify staffing ratios. For adult homes, a minimum of

3.75 hours of personal services staff time is required per week per resident.

Enriched Housing Program: The facility must have a program coordinator responsible for operating and maintaining the program in compliance with applicable requirements; a case manager to evaluate residents' needs and perform other case management duties, including investigating and reporting reportable incidents to the Department; and personal care staff to assist residents. Facilities must have staffing sufficient to provide the care needed by residents. The regulations specify staffing ratios. A minimum of 6 hours of personal services staff time is required per week per resident.

Assisted Living Residence: The facility must have an administrator who is responsible for daily operations and compliance with applicable rules; a case manager to assist residents with housing issues, information about local services and activities, and contacting appropriate responders in urgent and emergency situations; and resident aides to provide personal care assistance. Facilities certified to provide enhanced assisted living must, in addition, have licensed practical nurses, registered nurses, and home health aides. There are no minimum staffing ratios, though resident aides must be present in sufficient numbers 24 hours a day to meet resident's needs.

Administrator Education/Training

Adult Home and Assisted Living Residence: Administrators generally must be at least 21 years of age, be of good moral character as evidenced by three letters of recommendations, and have varying levels of education and experience based in part on the number of residents in the facility. For example, in a facility with 24 beds or less, an administrator must: (1) have a high school diploma or equivalency certificate, plus three years of related work experience, one year of which includes supervisory experience; (2) an associate degree from an accredited college or university in an approved course of study, plus two years of related work experience; or (3) a bachelor's degree from an accredited college or university in an approved course of study, plus one year of related supervisory work experience. The experience requirements increase as the size of the facility increases and are detailed in regulations.

Administrators not holding a current New York license as a nursing home administrator must complete a minimum of 60 hours of continuing education every two years.

Staff Education/Training

Adult Home and Enriched Housing Program: Must provide an

orientation and in-service training in the characteristics and needs of the population served, resident rights, program rules and regulations, duties and responsibilities of all staff, general and specific responsibilities of the individual being trained, and emergency procedures. There must be ongoing in-service training and opportunities for employees and volunteers to participate in work-related training.

Assisted Living Residence: Must provide orientation to facility policies and procedures; resident characteristics; and emergency evacuation and disaster plans.

**Entity Approving
CE Program**

None specified.

**Medicaid Policy and
Reimbursement**

New York's state plan covers personal care services offered under the assisted living program. In addition to the program, services provided by adult-care facilities may be covered for eligible residents. Medicaid reimbursement is not available for people in assisted living residences.

Citations

New York Codes, Rules and Regulations:

Title 10, Chapter X, Part 1001: Adult-Care Facilities, Assisted Living Residences.

Title 18, Part 485: Adult-Care Facilities, General Provisions.

Title 18, Part 486: Adult-Care Facilities, Inspection and Enforcement.

Title 18, Part 487: Adult-Care Facilities, Standards for Adult Homes.

Title 18, Part 488: Adult-Care Facilities, Standards for Enriched Housing.

Title 18, Part 490: Adult-Care Facilities, Standards for Residences for Adults.

Title 18, Part 494: Adult-Care Facilities, Standards for Assisted Living Programs.

<https://regs.health.ny.gov/>

Department of Health, Medicaid. Consumer Guide to Community-Based Long Term Care.

https://www.health.ny.gov/health_care/medicaid/program/longterm/

Department of Health. Adult Care Facilities/Assisted Living Information Page.

https://www.health.ny.gov/facilities/adult_care/

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