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## MEMORANDUM

To: Village of Hastings-on-Hudson Zoning Board of Appeals  
From: Stuart Mesinger, Caren LoBrutto  
cc: Linda Whitehead, Village of Hastings-on-Hudson Board of Trustees  
Date: June 30, 2017  
Re: Hastings-on-Hudson Senior Housing Zoning Text Amendments

Enclosures: New York State Department of Health (NYSDOH) Consumer Information Guide: Assisted Living Residence (not dated); Office for the Aging (NYSOFA) Livable New York Resource Manual: Assisted Living Residence (last updated in 2012); Article 46B of the New York State Public Health Law; and Village Law 7-725-b Approval of Special Use Permits

During the June 22, 2017 Zoning Board of Appeals (ZBA) meeting, a discussion was held regarding the proposed Senior Housing Zoning Text Amendments, and the ZBA requested information on assisted living developments in the area.

Table 1 provides information about assisted living facilities in the immediate area. Table 2 provides information on two facilities noted by the Planning Board members.

**Table 1: Assisted Living Facility Comparables**

Facility Name	City	Number of Beds	Lot Size (acres)	Density (beds/acre)	Building SF	Number of Stories	Number of Parking Spaces	Notes
Sunrise of Crestwood	Yonkers	116	3.03	38	197,775	3	53	
Brightview Tarrytown	Tarrytown	107	4.9	22	105,060	4	48	
Atria Briarcliff Manor	Briarcliff Manor	200	5.51	36	66,788	3	139	
The Bristol at Armonk	Armonk	171	6.45	27	119,000	3	74	
Artis Ossining	Ossining	64	1.53	42	36,000	2	unknown	Under construction

**Table 2: Facilities Outside the Area - Noted by Planning Board Members**

Facility Name	City	Number of Beds	Lot Size (acres)	Density (beds/acre)	Building SF	Number of Stories	Number of Parking Spaces	Notes
Artis Bethesda	Bethesda, MD	72	4.39 (> 2 acre conservati on easement)	36	40,000	1	unknown	Residential Estate - SF Zone. Density calculated off usable land.
Artis Princeton	Princeton, NJ	64	unknown	unknown	37,000	2	unknown	Under construction

The ZBA also requested information on Andrus on Hudson. The facility contains 197 beds and 134 parking spaces.

In addition, questions were raised about the New York State definitions as they pertain to the proposed zoning text amendments. The attached New York State Department of Health (NYSDOH) *Consumer Information Guide: Assisted Living Residence* (not dated); the Office for the Aging (NYSOFA) *Livable New York Resource Manual: Assisted Living Residence* (last updated in 2012); and Article 46B of the Public Health Law should assist the Board in its understanding of assisted living facilities.

As indicated at the end of the second page of the NYSOFA publication, “A Certificate of Need process (administered by the State Department of Health), which is required to obtain an Adult Home or Enriched Housing Program license, is also required to obtain licensure and certification as an Assisted Living Residence (ALR). ALR applicants must successfully demonstrate that there is need for their proposed project in the community and pass financial feasibility, character and competence, legal, and architectural reviews. The applicant must also obtain letters of support for their project from the county Social Service District and the Area Agency on Aging.” A Certificate of Need is reviewed according to four criteria: public need, financial feasibility, character and competence, and construction.<sup>1</sup> Given that an assisted living facility must receive a Certificate of Need from the NYSDOH it is reasonable to assume that only a limited number would be issued in Hastings-on-Hudson.

In addition, Article 46B of the Public Health Law is being provided to clarify those facilities licensed under the Mental Hygiene Law that are not considered assisted living facilities by New York State (e.g. drug rehabilitation centers).

Finally, the State’s enabling statute (Village Law 7-725-B) for special permit approvals is being provided to assist in understanding the distinction between granting variances and special permits. When a property does not conform to applicable zoning restrictions it can be authorized by a use or area variance awarded by the ZBA under certain circumstances. Special permitted uses are generally considered to be harmonious with as-of-right

<sup>1</sup> [https://www.health.ny.gov/facilities/cons/more\\_information/review\\_criteria.htm](https://www.health.ny.gov/facilities/cons/more_information/review_criteria.htm)

uses except in those circumstances where in a specific location they can negatively impact adjacent properties and need to be conditioned to reduce or mitigate impacts. As nursing homes, assisted living facilities, and independent living senior housing facilities are generally considered to be harmonious with residential land uses, the special permit process has been suggested for use by the Village to approve these types of facilities. By making these uses special permitted uses they will be reviewed according to Village of Hastings-on-Hudson Zoning Section 295-87, which states the following:

§ 295-87  
Permit standards.

No special use permit shall be granted unless the special use meets, in addition to all other provisions of this chapter, the following standards:

- A. The use shall be of such a nature, intensity, size and location that in general it will be in harmony with the character of the district in which the property lies and with the orderly development of that district and will not be detrimental to the orderly development, use or value of adjacent land and buildings.
- B. The location, nature and height of buildings, walls and fences, and the nature and extent of existing and proposed plantings on the site, shall be such that they will not be detrimental to the character or the orderly development of the district in which they lie, and will not be detrimental to the orderly development, use or value of adjacent land and buildings.
- C. The use shall not pose a danger to health, safety and welfare, shall not create undue pedestrian or vehicular traffic hazards and shall not include any display or signs, noise, fumes, vibrations or lights that will hinder the character or the orderly development of the district in which the property lies or impair the use, enjoyment or value of adjacent land and buildings.

In addition, Zoning Section 295-92 states the following:

§ 295-92  
Permit conditions.

In issuing a special use permit, the Board of Appeals may impose any conditions that it deems necessary to accomplish the reasonable application of the standards set forth in § 295-87, and to assure conformity with all other requirements of the law, including this chapter. Such conditions may include, without limitation, a requirement that the special use permit be periodically renewed or that it terminate at the end of a stated period.

The special use permit process would allow review of proposed nursing homes, assisted living facilities, and independent living senior housing facilities as determined on a case-by-case basis and under certain conditions. A public hearing would be required, and the focus of the review would be on the compatibility of the proposed use with neighboring uses.

# **CONSUMER INFORMATION GUIDE: ASSISTED LIVING RESIDENCE**

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## INTRODUCTION

This consumer information guide will help you decide if an assisted living residence is right for you and, if so, which type of assisted living residence (ALR) may best serve your needs.

There are many different housing, long-term care residential and community based options in New York State that provide assistance with daily living. The ALR is just one of the many residential community-based care options.

The New York State Department of Health's (DOH) website provides information about the different types of long-term care at [www.nyhealth.gov/facilities/long\\_term\\_care/](http://www.nyhealth.gov/facilities/long_term_care/).

More information about senior living choices is available on the New York State Office for the Aging website at [www.aging.ny.gov/ResourceGuide/Housing.cfm](http://www.aging.ny.gov/ResourceGuide/Housing.cfm).

A glossary for definitions of terms and acronyms used in this guide is provided on pages 10 and 11.

## WHAT IS AN ASSISTED LIVING RESIDENCE (ALR)?

An Assisted Living Residence is a certified adult home or enriched housing program that has additionally been approved by the DOH for licensure as an ALR. An operator of an ALR is required to provide or arrange for housing, twenty-four hour on-site monitoring, and personal care services and/or home care services in a home-like setting to five or more adult residents.

ALRs must also provide daily meals and snacks, case management services, and is required to develop an individualized service plan (ISP). The law also provides important consumer protections for people who reside in an ALR.

ALRs may offer each resident their own room, a small apartment, or a shared space with a suitable roommate. Residents will share common areas, such as the dining room or living room, with other people who may also require assistance with meals, personal care and/or home care services.

The philosophy of assisted living emphasizes personal dignity, autonomy, independence, privacy, and freedom of choice. Assisted living residences should facilitate independence and helps individuals to live as independently as possible and make decisions about how they want to live.

## WHO OPERATES ALRs?

ALRs can be owned and operated by an individual or a for-profit business group or corporation, a not-for-profit organization, or a government agency.

## PAYING FOR AN ALR

It is important to ask the ALR what kind of payment it accepts. Many ALRs accept private payment or long term care insurance, and some accept Supplemental Security Income (SSI) as the primary method of payment. Currently, Medicaid and Medicare will NOT pay for residing in an ALR, although they may pay for certain medical services received while in the ALR.

Costs vary among ALRs. Much of the variation is due to the types and level of services provided and the location and structure of the residence itself.

## TYPES OF ALRs AND RESIDENT QUALIFICATIONS

There are three types of ALRs: Basic ALRs (ALR), Enhanced ALRs (EALR), and Special Need ALRs (SNALR). The services provided, offered or permitted vary by type and can vary from residence to residence. Prospective residents and their representatives should make sure they understand the type of ALR, and be involved in the ISP process (described below), to ensure that the services to be provided are truly what the individual needs and desires.

**Basic ALR:** A Basic ALR takes care of residents who are medically stable. Residents need to have an annual physical exam, and may need routine medical visits provided by medical personnel onsite or in the community.

Generally, individuals who are appropriately served in a Basic ALR are those who:

- Prefer to live in a social and supportive environment with 24-hour supervision;
- Have needs that can be safely met in an ALR;
- May be visually or hearing impaired;
- May require some assistance with toileting, bathing, grooming, dressing or eating;
- Can walk or use a wheelchair alone or occasionally with assistance from another person, and can self-transfer;
- Can accept direction from others in time of emergency;
- Do not have a medical condition that requires 24-hour skilled nursing and medical care; or
- Do not pose a danger to themselves or others.

The Basic ALR is designed to meet the individual's social and residential needs, while also encouraging and assisting with activities of daily living (ADLs). However, a licensed ALR may also be certified as an Enhanced Assisted Living Residence (EALR) and/or Special Needs Assisted Living Residence (SNALR) and may provide additional support services as described below.

**Enhanced ALR (EALR):** Enhanced ALRs are certified to offer an enhanced level of care to serve people who wish to remain in the residence as they have age-related difficulties beyond what a Basic ALR can provide. To enter an EALR, a person can “age in place” in a Basic ALR or enter directly from the community or another setting. If the goal is to “age-in-place,” it is important to ask how many beds are certified as enhanced and how your future needs will be met.

People in an Enhanced ALR may require assistance to get out of a chair, need the assistance of another to walk or use stairs, need assistance with medical equipment, and/or need assistance to manage chronic urinary or bowel incontinence.

An example of a person who may be eligible for the Enhanced ALR level of care is someone with a condition such as severe arthritis who needs help with meals and walking. If he or she later becomes confined to a wheelchair and needs help transferring, they can remain in the Enhanced ALR.

The Enhanced ALR must assure that the nursing and medical needs of the resident can be met in the facility. If a resident comes to need 24-hour medical or skilled nursing care, he/she would need to be transferred to a nursing facility or hospital unless all the criteria below are met:

- a) The resident hires 24-hour appropriate nursing and medical care to meet their needs;
- b) The resident's physician and home care services agency decide his/her care can be safely delivered in the Enhanced ALR;
- c) The operator agrees to provide services or arrange for services and is willing to coordinate care; and
- d) The resident agrees with the plan.

**Special Needs ALR (SNALR):** Some ALRs may also be certified to serve people with special needs, for example Alzheimer’s disease or other types of dementia. Special Needs ALRs have submitted plans for specialized services, environmental features, and staffing levels that have been approved by the New York State Department of Health.

The services offered by these homes are tailored to the unique needs of the people they serve. Sometimes people with dementia may not need the more specialized services required in a Special Needs ALR, however, if the degree of dementia requires that the person be in a secured environment, or services must be highly specialized to address their needs, they may need the services and environmental features only available in a Special Needs ALR. The individual’s physician and/or representative and ALR staff can help the person decide the right level of services.

An example of a person who could be in a Special Needs ALR, is one who develops dementia with associated problems, needs 24-hour supervision, and needs additional help completing his or her activities of daily living. The Special Needs ALR is required to have a specialized plan to address the person’s behavioral changes caused by dementia. Some of these changes



may present a danger to the person or others in the Special Needs ALR. Often such residents are provided medical, social or neuro-behavioral care. If the symptoms become unmanageable despite modifications to the care plan, a person may need to move to another level of care where his or her needs can be safely met. The ALR's case manager is responsible to assist residents to find the right residential setting to safely meet their needs.

### ***Comparison of Types of ALRs***

	<b>ALR</b>	<b>EALR</b>	<b>SNALR</b>
Provides a furnished room, apartment or shared space with common shared areas	X	X	X
Provides assistance with 1-3 meals daily, personal care, home care, housekeeping, maintenance, laundry, social and recreational activities	X	X	X
Periodic medical visits with providers of resident choice are arranged	X	X	X
Medication management assistance	X	X	X
24 hour monitoring by support staff is available on site	X	X	X
Case management services	X	X	X
Individualized Service Plan (ISP) is prepared	X	X	X
Assistance with walking, transferring, stair climbing and descending stairs, as needed, is available		X	
Intermittent or occasional assistance from medical personnel from approved community resources is available	X	X	X
Assistance with durable medical equipment (i.e., wheelchairs, hospital beds) is available			X
Nursing care (i.e. vital signs, eye drops, injections, catheter care, colostomy care, wound care, as needed) is provided by an agency or facility staff		X	
Aging in place is available, and, if needed, 24 hour skilled nursing and/or medical care can be privately hired		X	
Specialized program and environmental modifications for individuals with dementia or other special needs			X

## HOW TO CHOOSE AN ALR

**VISITING ALRs:** Be sure to visit several ALRs before making a decision to apply for residence. Look around, talk to residents and staff and ask lots of questions. Selecting a home needs to be comfortable.

Ask to examine an “open” or “model” unit and look for features that will support living safely and independently. If certain features are desirable or required, ask building management if they are available or can be installed. Remember charges may be added for any special modifications requested.

It is important to keep in mind what to expect from a residence. It is a good idea to prepare a list of questions before the visit. Also, taking notes and writing down likes or dislike about each residence is helpful to review before making a decision.

**THINGS TO CONSIDER:** When thinking about whether a particular ALR or any other type of community-based housing is right, here are some things to think about before making a final choice.

**Location:** Is the residence close to family and friends?

**Licensure/Certification:** Find out the type of license/certification a residence has and if that certification will enable the facility to meet current and future needs.

**Costs:** How much will it cost to live at the residence? What other costs or charges, such as dry cleaning, cable television, etc., might be additional? Will these costs change?

**Transportation:** What transportation is available from the residence? What choices are there for people to schedule outings other than to medical appointments or trips by the residence or other group trips? What is within safe walking distance (shopping, park, library, bank, etc.)?

**Place of worship:** Are there religious services available at the residence? Is the residence near places of worship?

**Social organizations:** Is the residence near civic or social organizations so that active participation is possible?

**Shopping:** Are there grocery stores or shopping centers nearby? What other type of shopping is enjoyed?

**Activities:** What kinds of social activities are available at the residence? Are there planned outings which are of interest? Is participation in activities required?

**Other residents:** Other ALR residents will be neighbors, is this a significant issue or change from current living arrangement?

**Staff:** Are staff professional, helpful, knowledgeable and friendly?

**Resident Satisfaction:** Does the residence have a policy for taking suggestions and making improvements for the residents?

**Current and future needs:** Think about current assistance or services as well as those needed in several years. Is there assistance to get the services needed from other agencies or are the services available on site?

If the residence offers fewer Special Needs beds and/or Enhanced Assisted Living beds than the total capacity of the residence, how are these beds made available to current or new residents? Under what conditions require leaving the residence, such as for financial or for health reasons? Will room or apartment changes be required due to health changes? What is the residence's policy if the monthly fee is too high or if the amount and/or type of care needs increase?

**Medical services:** Will the location of the facility allow continued use of current medical personnel?

**Meals:** During visit, eat a meal. This will address the quality and type of food available. If, for cultural or medical reasons, a special diet is required, can these types of meals be prepared?

**Communication:** If English is not the first language and/or there is some difficulty communicating, is there staff available to communicate in the language necessary? If is difficulty hearing, is there staff to assist in communicating with others?

**Guests:** Are overnight visits by guests allowed? Does the residence have any rules about these visits? Can a visitor dine and pay for a meal? Is there a separate area for private meals or gatherings to celebrate a special occasion with relatives?

**WHO CAN HELP YOU CHOOSE AN ALR?** When deciding on which ALR is right, talk to family members and friends. If they make visits to the residences, they may see something different, so ask for feedback.

Physicians may be able to make some recommendations about things that should be included in any residence. A physician who knows about health needs and is aware of any limitations can provide advice on your current and future needs.

Before making any final decisions, talking to a financial advisor and/or attorney may be appropriate. Since there are costs involved, a financial advisor may provide information on how these costs may affect your long term financial outlook. An attorney review of any documents may also be valuable. (e.g., residency agreement, application, etc.).

## ADMISSION CRITERIA AND INDIVIDUALIZED SERVICE PLANS (ISP)

An evaluation is required before admission to determine eligibility for an ALR. The admission criteria can vary based on the type of ALR. Applicants will be asked to provide results of a physical exam from within 30 days prior to admission that includes a medical, functional, and mental health assessment (where appropriate or required). This assessment will be reviewed as part of the Individualized Service Plan (ISP) that an ALR must develop for each resident.

The ISP is the “blueprint” for services required by the resident. It describes the services that need to be provided to the resident, and how and by whom those services will be provided. The ISP is developed when the resident is admitted to the ALR, with the input of the resident and his or her representative, physician, and the home health care agency, if appropriate. Because it is based on the medical, nutritional, social and everyday life needs of the individual, the ISP must be reviewed and revised as those needs change, but at least every six months.

### APPLYING TO AN ALR

The following are part of entering an ALR:

***An Assessment:*** Medical, Functional and Mental: A current physical examination that includes a medical, functional and mental health evaluation (where appropriate or required) to determine what care is needed. This must be completed by a physician 30 days prior to admission. Check with staff at the residence for the required form.

***An application*** and any other documents that must be signed at admission (get these from the residence). Each residence may have different documents. Review each one of them and get the answers to any questions.

***Residency Agreement*** (contract): All ALR operators are required to complete a residency agreement with each new resident at the time of admission to the ALR. The ALR staff must disclose adequate and accurate information about living in that residence. This agreement determines the specific services that will be provided and the cost. The residency agreement must include the type of living arrangements agreed to (e.g., a private room or apartment); services (e.g., dining, housekeeping); admission requirements and the conditions which would require transfer; all fees and refund policies; rules of the residence, termination and discharge policies; and resident rights and responsibilities.

An Assisted Living Model Residency Admission Agreement is available on the New York State Health Department’s website at:

[http://www.nyhealth.gov/facilities/assisted\\_living/docs/model\\_residency\\_agreement.pdf](http://www.nyhealth.gov/facilities/assisted_living/docs/model_residency_agreement.pdf) .

Review the residency agreement very carefully. There may be differences in each ALR's residency agreement, but they have to be approved by the Department. Write down any questions or concerns and discuss with the administrator of the ALR. Contact the Department of Health with questions about the residency agreement. (See number under information and complaints)

***Disclosure Statement:*** This statement includes information that must be made known to an individual before signing the residency agreement. This information should include: licensure, ownership, availability of health care providers, availability of public funds, the State Health Department toll-free number for reporting complaints, and a statement regarding the availability and telephone numbers of the state and local long-term care ombudsman services. The disclosure statement should be reviewed carefully.

***Financial Information:*** Ask what types of financial documents are needed (bank statements, long term care insurance policies, etc.). Decide how much financing is needed in order to qualify to live in the ALR. Does the residence require a deposit or fee before moving in? Is the fee refundable, and, if so, what are the conditions for the refund?

***Before Signing Anything:*** Review all agreements before signing anything. A legal review of the documents may provide greater understanding. Understand any long term care insurance benefits. Consider a health care proxy or other advance directive, making decision about executing a will or granting power of attorney to a significant other may be appropriate at this time.

***Resident Rights, Protection, and Responsibilities:*** New York State law and regulations guarantee ALR residents' rights and protections and define their responsibilities. Each ALR operator must adopt a statement of rights and responsibilities for residents, and treat each resident according to the principles in the statement. For a list of ALR resident rights and responsibilities visit the Department's website at [http://www.nyhealth.gov/facilities/assisted\\_living/docs/resident\\_rights.pdf](http://www.nyhealth.gov/facilities/assisted_living/docs/resident_rights.pdf). For a copy of an individual ALR's statement of rights and responsibilities, ask the ALR.

## LICENSING AND OVERSIGHT

ALRs and other adult care facilities are licensed and inspected every 12 to 18 months by the New York State Department of Health. An ALR is required to follow rules and regulations and to renew its license every two years. For a list of licensed ALRs in NYS, visit the Department of Health's website at [www.nyhealth.gov/facilities/assisted\\_living/licensed\\_programs\\_residences.htm](http://www.nyhealth.gov/facilities/assisted_living/licensed_programs_residences.htm).

## INFORMATION AND COMPLAINTS

For more information about assisted living residences or to report concerns or problems with a residence which cannot be resolved internally, call the New York State Department of Health or the New York State Long Term Care Ombudsman Program. The New York State Department of Health's Division of Assisted Living can be reached at (518) 408-1133 or toll free at 1-866-893-6772. The New York State Long Term Care Ombudsman Program can be reached at 1-800-342-9871.

## Glossary of Terms Related to Guide

**Activities of Daily Living (ADL):** Physical functions that a person performs every day that usually include dressing, eating, bathing, toileting, and transferring.

**Adult Care Facility (ACF):** Provides temporary or long-term, non-medical, residential care services to adults who are to a certain extent unable to live independently. There are five types of adult care facilities: adult homes, enriched housing programs, residences for adults, family-type homes and shelters for adults. Of these, adult homes, enriched housing programs, and residences for adults are overseen by the Department of Health. Adult homes, enriched housing programs, and residences for adults provide long-term residential care, room, board, housekeeping, personal care and supervision. Enriched housing is different because each resident room is an apartment setting, i.e. kitchen, larger living space, etc. Residences for adults provide the same services as adult homes and enriched housing except for required personal care services.

**Adult Day Program:** Programs designed to promote socialization for people with no significant medical needs who may benefit from companionship and supervision. Some programs provide specially designed recreational and therapeutic activities, which encourage and improve daily living skills and cognitive abilities, reduce stress, and promote capabilities.

**Adult Day Health Care:** Medically-supervised services for people with physical or mental health impairment (examples: children, people with dementia, or AIDS patients). Services include: nursing, transportation, leisure activities, physical therapy, speech pathology, nutrition assessment, occupational therapy, medical social services, psychosocial assessment, rehabilitation and socialization, nursing evaluation and treatment, coordination of referrals for outpatient health, and dental services.

**Aging in Place:** Accommodating a resident's changing needs and preferences to allow the resident to remain in the residence as long as possible.

**Assisted Living Program (ALP):** Available in some adult homes and enriched housing programs. It combines residential and home care services. It is designed as an alternative to nursing home placement for some people. The operator of the assisted living program is responsible for providing or arranging for resident services that must include room, board, housekeeping, supervision, personal care, case management and home health services. This is a Medicaid funded service for personal care services.

**Disclosure Statement:** Information made known to an individual before signing the residency agreement. This information should include: licensure, ownership, availability of health care providers, availability of public funds, the State Health Department toll-free number for reporting complaints, and a statement regarding the availability and telephone numbers of the state and local long-term care ombudsman services.

**Health Care Facility:** All hospitals and nursing homes licensed by the New York State Department of Health.

**Health Care Proxy:** Appointing a health care agent to make health care decisions for you and to make sure your wishes are followed if you lose the ability to make these decisions yourself.

**Home Care:** Health or medically related services provided by a home care services agency to people in their homes, including adult homes, enriched housing, and ALRs. Home care can meet many needs, from help with household chores and personal care like dressing, shopping, eating and bathing, to nursing care and physical, occupational, or speech therapy.

**Instrumental Activities of Daily Living (IADL's):** Functions that involve managing one's affairs and performing tasks of everyday living, such as preparing meals, taking medications, walking outside, using a telephone, managing money, shopping and housekeeping.

**Long Term Care Ombudsman Program:** A statewide program administered by the New York State Office for the Aging. It has local coordinators and certified ombudsmen who help resolve problems of residents in adult care facilities, assisted living residences, and skilled nursing facilities. In many cases, a New York State certified ombudsman is assigned to visit a facility on a weekly basis.

**Monitoring:** Observing for changes in physical, social, or psychological well being.

**Personal Care:** Services to assist with personal hygiene, dressing, feeding, and household tasks essential to a person's daily living.

**Rehabilitation Center:** A facility that provides occupational, physical, audiology, and speech therapies to restore physical function as much as possible and/or help people adjust or compensate for loss of function.

**Supplemental Security Income (SSI):** A federal income supplement program funded by general tax revenues (not Social Security taxes). It is designed to help aged, blind, and disabled people, who have little or no income; and it provides cash to meet basic needs for food, clothing and shelter. Some, but not all, ALRs may accept SSI as payment for food and shelter services.

**Supervision:** Knowing the general whereabouts of each resident, monitoring residents to identify changes in behavior or appearance and guidance to help residents to perform basic activities of daily living.



**State of New York  
Department of Health**

1505

12/10



Lisa Newcomb, Executive Director  
Empire State Association of Assisted Living  
Clifton Park, NY

## **ASSISTED LIVING RESIDENCE (ALR)**

### **Description:**

In New York State, an Assisted Living Residence (ALR) is defined in Section 4662 of the Public Health Law and in 10 NYCRR Part 1001 as an entity that provides or arranges for housing, 24-hour on-site monitoring, personal care (help with bathing, dressing, eating, grooming, and transferring), and/or home care services in a home-like setting to five or more adult residents. In addition, supportive services, socialization activities, meals, case management, and the development of an individualized service plan for each resident are also provided. Residents requiring continuing nursing or medical care are not eligible for an ALR.

Operators of Adult Homes (which are available to adults aged 18 and over) and operators of Enriched Housing (which are available to people aged 65 and over) are eligible for licensure to provide the additional levels of services and care provided under an assisted living license in New York, and ALRs are licensed and regulated the New York State Department of Health.

Across the country, the concept of "assisted living" began in the 1980s as a response to the very strong preference of older people for a non-institutional, flexible, home-like supportive living environment when frailties compromised their ability to continue living on their own. Development of assisted living facilities grew rapidly as the older population increased dramatically; and, over time, individual states gradually increased government oversight as the age and frailty of assisted living residents continued to rise. As a result, assisted living facilities exist all across the country, but models vary among states, as does the level of services and care provided, the extent to which these models are defined in law, the extent to which they are licensed and regulated, and the government agency selected to govern their oversight.

### *New York—*

In many states, any housing and services development or community for older people can market itself and call itself "assisted living." In New York State, any development, community, or facility that (1) calls itself assisted living, or (2) represents itself as offering "assisted living services," or (3) whose provision of services and care meets the law's description of assisted living must obtain an Adult Home or Enriched Housing Program license and an Assisted Living Residence license from the New York State Department of Health. For the most part, an ALR operates under the same rules and regulations as an Adult Home or Enriched Housing Program; however an ALR license does impose some additional requirements, particularly in the areas of resident protections and disclosures, as well as additional architectural and reporting requirements.

New York law identifies three levels of Assisted Living licensure:

- **Basic Assisted Living Residence (ALR)** – The characteristics and needs of residents in Basic ALR (admission and retention standards) are the same as those in Adult Homes or Enriched Housing Programs.
- **Enhanced Assisted Living Residence (EALR)** – A licensed Assisted Living Residence provider may obtain certification from the New York State Department of Health to provide an enhanced level of care, which authorizes the ALR provider to serve individuals who no longer meet the admission/retention criteria for the Adult Home/Enriched Housing program/basic assisted living residence—particularly residents who have become physically frailer. For example, EALR residents may need another person to assist them to walk, to transfer, to descend stairs, or to operate medical equipment. To achieve certification, the provider must show evidence of having appropriate levels of service capacity, staff, and staff training to provide an enhanced level of care; and, in some cases, EALR certification allows the provider to use his/her own licensed or registered nurse staff to provide some nursing services.
- **Special Needs Assisted Living Residence (SNALR)** – A licensed Assisted Living Residence provider may obtain certification from the New York State Department of Health to serve individuals who, due to Alzheimer's Disease or other dementia conditions, require a need for more specialized services, more intense supervision, and a safer, secure environment specifically designed to appropriately meet their evolving needs as their cognitive abilities decline. To achieve SNALR certification, the provider must show evidence of having sufficient levels of programming, staffing, and services that address the specialized needs of SNALR residents.

The State's Assisted Living Residence regulations became effective in early 2008, and over 250 providers (most of which were existing Adult Home and Enriched Housing Program providers) applied for ALR licensure. By 2010, fewer than ten have completed the application process and have received the new license and certifications, with the remaining still being processed by the State Department of Health.

A Certificate of Need process (administered by the State Department of Health), which is required to obtain an Adult Home or Enriched Housing Program license, is also required to obtain licensure and certification as an ALR. ALR applicants must successfully demonstrate that there is need for their proposed project in the community and pass financial feasibility, character and competence, legal, and architectural reviews. The applicant must also obtain letters of support for their project from the county Social Service District and the Area Agency on Aging. To date, such letters of support have been successfully obtained because, in general, localities recognize growing consumer demand for the socially based assisted living level of housing and services, and they welcome the job creation and increased tax revenues associated with the ALR's development and operation.

Assisted Living Residences can be successfully implemented in all geographic areas of New York—urban, suburban, and rural—with their sizes, architectural designs, and programming reflecting the characteristics of the residents and the communities in which they are located. For example, in small and rural communities, an ALR may be a house integrated into a residential neighborhood. In urban areas, they are more likely to be larger and purpose-built.

### **Benefits:**

*For both older residents and younger residents with disabilities:*

- The various levels of assisted living, as additions to Adult Homes and Enriched Housing, provide a continuum-of-housing-and-services for residents, eliminating the need for multiple relocations when increasing frailties require higher levels of care. This is important for younger-aged residents with disabilities, but particularly critical for older residents, for whom the trauma of multiple relocations has a significant negative impact on mental and physical health.
- For older people who can no longer successfully live at home or who need more care than is provided in other senior housing options, Assisted Living Residences provide an advanced level of care in a home-like, flexible living environment, lessening the need to relocate into a nursing home.
- Assisted living services are personalized, based on each individual's needs, with the goals of (1) promoting residents' independence to the greatest extent possible, and in a dignified manner; and (2) regardless of a person's level of need, making paramount the ability of residents to make choices about their own lives.
- Special Needs Assisted Living Residences provide a safe, secure living environment where specialized design elements, programming, and services provide maximized freedom together with appropriate care for residents with Alzheimer's Disease and other cognitive disabilities.

*For the community:*

- There are Assisted Living Residences of all shapes and sizes throughout the State, providing a housing alternative that meets the unique profile of each community's population and level/type of need.

### **Impediments or barriers to development or implementation:**

- **Community-level problems** – such as antiquated or unclear zoning laws, lack of municipality provided utilities, or poor community planning efforts can make it difficult for developers to construct new Assisted Living Residences.
- **Zoning** – zoning requirements differ from one community to another—each municipality may consider an ALR in a different way. When considering a potential location, it is important to find out early if a potential site location is

zoned appropriately, needs to be re-zoned, or if you can apply for a special use permit from the municipality to allow for a specific use.

- **“Not In My Back Yard” (NIMBY)** – Assisted Living Residences can experience the same neighborhood resistance as other congregate or multiunit residential options for special-needs populations. Typically, neighborhood opposition stems from a fear of how such a development will change the character of the neighborhood, change traffic flow or density, lower land or housing values, increase noise, and alter community aesthetics. These issues can be mitigated, public sentiment influenced, and potential opposition disarmed by (1) having good communication with the municipality and the residents of the town/village/city, and providing community residents with ample opportunity to express concerns and ask questions via town or city meetings, and (2) educating residents about housing needs and about assisted living residents, and showing evidence from studies of existing Assisted Living Residences about the impact on neighborhoods. Such efforts can convince local residents that a good-quality ALR can be a community asset and is an important part of any comprehensive community planning effort.
- **Funding for operations** - development and, ultimately, operation is much more challenging in economically depressed areas of the State because government funding for low-income residents (SSI Level 3) is inadequate to cover the costs of the base Adult Home/Enriched Housing program, let alone the additional services associated with the three levels of ALR services. The only viable funding available at this time for ALR/EALR/SNALR development and operation is the consumer's private resources. If there is not a market or adequate pool of consumers who have private financial means to pay market-rate monthly rent and service charges, the development may not be feasible.

#### **Resource—examples:**

- **Case Study – Newark NY**  
While attempting to develop a 58-bed full-service adult home/assisted living community, a developer experienced problems regarding proper zoning and resistance from neighborhood residents. After many meetings with town officials, the developer was able to apply for a “special use permit” to allow this type of project to be constructed in an “agricultural” zone. The NIMBY issue was addressed through a series of town hall meetings, which allowed for open conversation among the developer, town officials, and neighborhood residents. The project was conceived in August of 2006; it was finally approved for construction in June of 2008; and its opening was scheduled for June, 2009.

When considering where best to construct a new ALR, there are many considerations that play a part in determining where the facility should be built. Once a developer/provider finds a community that may benefit from the ALR “housing and services” model, a suitable location must be identified. A first step is to talk with local officials and community leaders to determine how much, if any, resistance they may encounter regarding zoning, neighborhood residents,

and/or infrastructure issues. Through persistence and patience, developers can help communities make "caring for all segments of their resident populations" a part of their strategic comprehensive community planning.

- For specific examples of successfully operating Assisted Living Residences, contact the Empire State Association of Assisted Living: (518) 371-2573; [lnewcomb1@aol.com](mailto:lnewcomb1@aol.com).
- New York State Department of Health—for a list of all Adult Care Facilities, by county, in New York State (including Adult Homes, Enriched Housing Programs, Assisted Living Programs, and three levels of Assisted Living Residences): [http://www.health.ny.gov/facilities/adult\\_care/](http://www.health.ny.gov/facilities/adult_care/).

**Resource—written and web:**

- New York State Department of Health—for laws and regulations governing development and operation of Adult Homes and Enriched Housing Programs in New York State:  
[http://www.health.ny.gov/regulations/nycrr/title\\_18/](http://www.health.ny.gov/regulations/nycrr/title_18/); click on "Search Title 18"; then use the search tool to view the following parts under Title 18, as well as other parts of the regulations:
  - Title 18 NYCRR Social Services regulations:
    - Licensure: Part 485;
    - Regulatory oversight: Part 486;
    - Operations for Adult Homes: Part 487;
    - Operations for Enriched Housing programs: Part 488.
- New York State Department of Health:
  - For information pertaining to Assisted Living Residences in New York State: [http://www.health.state.ny.us/facilities/assisted\\_living/index.htm](http://www.health.state.ny.us/facilities/assisted_living/index.htm).
  - For regulations governing the operation of Assisted Living Residences in New York State: [http://www.health.ny.gov/facilities/assisted\\_living/adopted\\_regulations/](http://www.health.ny.gov/facilities/assisted_living/adopted_regulations/):
    - Assisted living residence/enhanced/special needs: Part 1001.
- For information about Adult Care Facilities and Assisted Living Residences—Empire State Association of Assisted Living: <http://www.esaal.org/pdf/NYConnectsGuide.pdf>.
- The National Center for Assisted Living—an entity of the American Health Care Association; provides national advocacy, education, networking, professional development, publications, resources, and quality initiatives for assisted living providers across the country: <http://www.ahcancal.org/ncal/Pages/default.aspx>.
- Consumer Consortium on Assisted Living—a national organization focused on the needs, rights, and protection of assisted living consumers and their caregivers;

extensive educational information about assisted living, choosing an assisted living facility, resources, etc.: <http://www.ccal.org/>.

- National Ombudsman Resource Center—for a list of each state's Long-Term Care State Ombudsman, each of whom oversees the network of local ombudsmen throughout their state who advocate on behalf of nursing home and assisted living residents and their families and who help residents and families resolve issues and problems related to living in the facilities: <http://www.ltombudsman.org/ombudsman>.  
List for New York State: <http://www.ltombudsman.org/ombudsman>; on map, click on New York State; then scroll down the page and see the list of ombudsman coordinators in New York.
- National Center for Assisted Living (2009), *Assisted Living State Regulatory Review*, including descriptive and contact information for each state's governing agency overseeing assisted living facilities: [http://www.ahcancal.org/ncal/resources/Documents/2009\\_reg\\_review.pdf](http://www.ahcancal.org/ncal/resources/Documents/2009_reg_review.pdf).
- Center for Excellence in Assisted Living—their mission is to act as an objective resource center to facilitate quality improvement in assisted living: <http://www.theceal.org/>.
- Assisted Living Federation of America—a national 500-member professional association of assisted living providers; advocates on behalf of members and provides educational events and conferences meant to increase operational excellence among provider members: <http://www.alfa.org/alfa/Default.asp>.
- B. Wright (October, 2004), "An Overview of Assisted Living: 2004," *Issue Brief*. Washington, DC: AARP, Public Policy Institute.  
[http://assets.aarp.org/rgcenter/il/ib72\\_al.pdf](http://assets.aarp.org/rgcenter/il/ib72_al.pdf).  
B. Wright (October, 2004), "Assisted Living in the United States—a research report," *Policy and Research for Professionals in Aging*. Washington, DC: AARP: [http://assets.aarp.org/rgcenter/post-import/fs62r\\_assisted.pdf](http://assets.aarp.org/rgcenter/post-import/fs62r_assisted.pdf).
- C. Hawes, M. Rose, and C. Phillips (Myers Research Institute) (December 14, 1999), *A National Study of Assisted Living for the Frail Elderly--Results of a National Survey of Facilities*. Washington, DC: U. S. Department of Health and Human Services. <http://aspe.hhs.gov/daltcp/reports/facres.htm>.
- C. Rudder, D. Smith, and G. Lieberman (November, 2001), *Assisted Living in New York State—A Summary of Findings*. Philadelphia, PA: Temple University's Fox School of Business and Management and the Health Care Management Program; and New York City: the Nursing Home Community Coalition of New York State, and the Coalition of Institutionalized Aged and Disabled.  
[http://www.ltccc.org/papers/assisted\\_living\\_project.htm](http://www.ltccc.org/papers/assisted_living_project.htm).
- *Creating Affordable Assisted Living: A Coming Home Case Study* (Garden Place: Affordability with Distinction—Providing Elders in Milwaukee, WI, with a New Alternative) (July, 2006). A collaborative development project among: Wisconsin Housing and Economic and Development Authority, Wisconsin

Department of Health and Family Services, NCB Capital Impact, and SunStarr Real Estate Group. Provides a description of all aspects of the development process for this project:

<http://www.wiaffordableassistedliving.org/demonstrations/GardenPlaceReport06.pdf>.

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## ARTICLE 46-B—ASSISTED LIVING

Title	Section
I. Findings and Definitions .....	4650
II. Assisted Living .....	4652
III. Enhanced Assisted Living Certificate .....	4654
IV. General Requirements .....	4656

### Historical and Statutory Notes

L.2004, c. 2 legislation

L.2004, c. 2, § 1, provides:

"§ 1. Short title. This act shall be known and may be cited as the 'assisted living reform act'."

## TITLE I—FINDINGS AND DEFINITIONS

### Section

4650. Legislative purpose and findings.

4651. Definitions.

### § 4650. Legislative purpose and findings

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4650, in Article 46-A, Fee-for-Service Continuing Care, ante.]*

The legislature hereby finds and declares that congregate residential housing with supportive services in a home-like setting, commonly known as assisted living, is an integral part of the continuum of long term care. Further, the philosophy of assisted living emphasizes aging in place, personal dignity, autonomy, independence, privacy and freedom of choice.

The intent of this article is to create a clear and flexible statutory structure for assisted living that provides a definition of assisted living residence; that requires licensure of the residence; that requires a written residency agreement that contains consumer protections; that enunciates and protects resident rights; and that provides adequate and accurate information for consumers, which is essential to the continued development of a viable market for assisted living. Entities which hold themselves out as assisted living residences must apply for licensure and be approved by the state to operate as assisted living residences pursuant to this article, and must comply with the requirements of this article.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

### Library References

Asylums and Assisted Living Facilities  $\S$  11, 14.



## Title I

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities §§ 2, 8 to 9.

## Research References

## ALR Library

86 ALR 2nd 1233, Right to File Briefs in Trial Court.

## Notes of Decisions

Amicus curiae briefs 1  
Regulations 2

parties. Empire State Ass'n of Assisted Living, Inc. v. Daines, 2009, 26 Misc.3d 340, 887 N.Y.S.2d 452. Amicus Curiae ☞ 1

## 1. Amicus curiae briefs

Health-care associations were entitled to file brief as amicus curiae in action brought by adult care facilities (ACFs) against Commissioner of the Department of Health seeking nullification of certain regulations associated with the Assisted Living Reform Act, since case concerned questions of important public interest, and associations demonstrated that they represented a point of view which might not have been fully represented by the

## 2. Regulations

Case management requirements of regulation issued by Commissioner of Department of Health governing assisted living residences (ALRs) personnel were not irrational, arbitrary, or out of line with Assisted Living Reform Act. Empire State Ass'n of Assisted Living, Inc. v. Daines, 2009, 26 Misc.3d 340, 887 N.Y.S.2d 452. Asylums And Assisted Living Facilities ☞ 18

## § 4651. Definitions

[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4651, in Article 46-A, Fee-for-Service Continuing Care, ante.]

As used in this article:

1. "Assisted living" and "assisted living residence" means an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly), in a home-like setting to five or more adult residents unrelated to the assisted living provider. An applicant for licensure as assisted living that has been approved in accordance with the provisions of this article must also provide daily food service, twenty-four hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. An operator of assisted living shall provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status.

Assisted living and enhanced assisted living shall not include:

(a) residential health care facilities or general hospitals licensed under article twenty-eight of this chapter;

(b) continuing care retirement communities which possess a certificate of authority pursuant to article forty-six of this chapter, unless the continuing care retirement community is operating an assisted living residence as defined under this section;

(c) residential services for persons that are provided under a license pursuant to article sixteen, nineteen, thirty-one or thirty-two of the mental hygiene law or other residential services primarily funded by or primarily under the jurisdiction of the office for mental health;

(d) naturally occurring retirement communities, as defined in section five hundred thirty-six-g of the executive law;

(e) assisted living programs approved by the department pursuant to section four hundred sixty-one-l of the social services law;

(f) public or publicly assisted multi-family housing projects administered or regulated by the U.S. department of housing and urban development or the division of housing and community renewal or funded through the homeless housing assistance program that were designed for the elderly or persons with disabilities, or homeless persons, provided such entities do not provide or arrange for home care, twenty-four hour supervision or both, beyond providing periodic coordination or arrangement of such services for residents at no charge to residents. Except, however, such entities that are in receipt of grants for conversion of elderly housing to assisted living facilities pursuant to section 1701-q-2 of the United States Code shall license as an assisted living pursuant to this article;

(g) an operating demonstration as such term is defined in paragraph (d) of subdivision one of section four thousand four hundred three-f of this chapter;

(h) hospice and hospice residences as defined pursuant to section four thousand two of this chapter;

(i) an adult care facility as defined in subdivision twenty-one of section two of the social services law that is not utilizing the term assisted living (or any derivation thereof) or is not required to obtain an enhanced assisted living certificate; and

(j) independent senior housing, shelters or residences for adults. For purposes of this article and for purposes of determining certification pursuant to article seven of the social services law, the department shall by regulation, define independent senior housing, provided such definition shall be based on whether the operator does not

## Title I

provide, arrange for, or coordinate personal care services or home care services on behalf of residents; and the facility does not provide case management services in a congregate care setting for residents. Nothing in this chapter shall preclude a resident of independent senior housing from personally and directly obtaining private personal care or home care services from a licensed or certified home care agency.

2. "Applicant" shall mean the entity which submits an assisted living licensure application with the department pursuant to title two or three of this article.

3. "Adult home" means an adult home as defined by subdivision twenty-five of section two of the social services law.

4. "Enriched housing program" means an enriched housing program, as defined in subdivision twenty-eight of section two of the social services law.

5. "Assisted living operator" or "operator" means a person, persons or an entity which has obtained the written approval of the department to operate an assisted living residence in accordance with this article.

6. "Controlling person" means any person who by reason of a direct or indirect ownership interest, whether of record or beneficial, has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said corporation, partnership or other entity.

7. "Resident" means an adult not related to the provider, who, pursuant to a residency agreement with a provider resides in an assisted living or enhanced assisted living residence, as applicable.

8. "Resident's representative" means a family member or other individual identified in the residency agreement required under section four thousand six hundred fifty-eight of this article who is authorized by a resident to communicate with residence employees regarding the health, well-being, needs of and services provided to such resident and to assist the resident in obtaining needed services.

9. "Resident's legal representative" means a person duly authorized under applicable state law to act on behalf of a resident. Such legal representative could include, but is not necessarily limited to, a court appointed guardian, an attorney in-fact under a durable power of attorney, an agent under a health care proxy or a representative payee, depending upon the action to be taken.

10. "Home care services" means the services defined in subdivision one of section three thousand six hundred two of this chapter, as

provided by a home care services agency which has been approved to operate pursuant to article thirty-six of this chapter.

11. "Individualized service plan" or "ISP" means a written plan developed pursuant to section four thousand six hundred fifty-nine of this article.

12. "Monitoring" means an ability of the assisted living provider to respond to urgent or emergency needs or requests for assistance with appropriate staff, at any hour of any day or night of the week. Such monitoring must be provided on site.

13. "Aging in place" means, care and services at a facility which possesses an enhanced assisted living certificate which, to the extent practicable, within the scope of services set forth in the written residency agreement executed pursuant to section four thousand six hundred fifty-eight of this article, accommodates a resident's changing needs and preferences in order to allow such resident to be admitted to or remain in the residence as long as the residence is able and authorized to accommodate the resident's current and changing needs. A residence that does not possess an enhanced assisted living certificate shall not be deemed able to accommodate a resident's needs if the resident requires or is in need of either enhanced assisted living or twenty-four hour skilled nursing care or medical care provided by facilities licensed pursuant to article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law.

14. "Enhanced assisted living" or "enhanced assisted living resident" means the care or services provided, or a resident who is provided the care and services, pursuant to an enhanced assisted living certificate.

15. "Enhanced assisted living certificate" means a certificate issued by the department which authorizes an assisted living residence to provide aging in place by either admitting or retaining residents who desire to age in place and who: (a) are chronically chairfast and unable to transfer, or chronically require the physical assistance of another person to transfer; (b) chronically require the physical assistance of another person in order to walk; (c) chronically require the physical assistance of another person to climb or descend stairs; (d) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or (e) has chronic unmanaged urinary or bowel incontinence. In no event shall a person be admitted to an assisted living residence who is in need of continual twenty-four hour nursing or medical care, who is chronically bedfast, or who is cognitively, physically or

# ASSISTED LIVING

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medically impaired to such a degree that his or her safety would be endangered.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005. Amended L.2010, c. 346, § 1, eff. Aug. 13, 2010.)

## Research References

### Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

## TITLE II—ASSISTED LIVING

### Section

4652. General requirements; applicability of laws to assisted living.

4653. Licensure procedures and requirements for assisted living.

### § 4652. General requirements; applicability of laws to assisted living

[Added by L.2004, c. 2, § 2. See, also, *Public Health Law* § 4652, in *Article 46-A, Fee-for-Service Continuing Care, ante.*]

Adult homes and enriched housing programs which possess a valid operating certificate issued pursuant to title two of article seven of the social services law, may call themselves assisted living provided they:

1. file an application for licensure and are approved by the department as assisted living;
2. comply with all the requirements of this article.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

## Library References

Asylums and Assisted Living Facilities ⇨14.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities §§ 2, 8 to 9.

## Research References

### Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

### § 4653. Licensure procedures and requirements for assisted living

[Added by L.2004, c. 2, § 2. See, also, *Public Health Law* § 4653, in *Article 46-A, Fee-for-Service Continuing Care, ante.*]

ARTICLE 46-B—ASSISTED LIVING

TITLE I—FINDINGS AND DEFINITIONS

§ 4650. Legislative purpose and findings

Research References

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86 ALR 2nd 1233, Right to File Briefs in Trial Court.

Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 199, Enhanced Assisted Living.

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 200, Applicable Laws.

§ 4651. Definitions

Research References

Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 197, Definitions.

TITLE II—ASSISTED LIVING

Section

4653. Licensure procedures and requirements for assisted living.

§ 4652. General requirements; applicability of laws to assisted living

Research References

Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 198, Licensure and Other Requirements.

§ 4653. Licensure procedures and requirements for assisted living

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4653, in Article 46-A, Fee-For-Service Continuing Care Retirement Communities Demonstration Program, ante.]*

1. In order to operate as assisted living, an operator shall be licensed as an adult home or enriched housing program and apply and be approved for licensure with the commissioner pursuant to this article. The operator shall provide, on an application form developed by the commissioner, the following information to the commissioner in order to be licensed:

(a) business name, street address, and mailing address of the residence and of the owners of the residence;

(b) status of current operating certificate;

(c) verification that the operator has a valid residency agreement in compliance with this article to be entered into with each resident,



resident's representative and resident's legal representative, if any, and shall include a copy of the information to be included in the residency agreement and disclosures as required pursuant to the provisions of section four thousand six hundred fifty-eight of this article, as added by chapter two of the laws of two thousand four, that will be given to prospective residents; and

(d) any other information the department may deem necessary for the evaluation of the application provided such information is not duplicative of what is otherwise required of the applicant in obtaining an adult care facility license.

2. For existing licensed operators in good standing and their affiliates, the department shall develop a streamlined application review and approval process, in collaboration with representatives of associations of operators, to be available for use in relation to approval of an additional facility of the same type. Notwithstanding any provision of law or regulation to the contrary, the streamlined application review and approval process shall include, but not be limited to, the following:

(a) a certification process and form for the operator or its affiliate to attest that it will have sufficient financial resources, revenue and financing to meet facility expenses and resident needs, which shall satisfy the statutory and regulatory financial component of the application review and approval process;

(b) a certification process and form for the operator or its affiliate to attest that its legal, corporate and organizational documents comply in substance with department requirements, which shall satisfy the statutory and regulatory legal component of the application review and approval process;

(c) a certification process and form for the operator or its affiliate to attest that it is in substantial compliance with all applicable codes, rules and regulations in any other state in which it operates, and to disclose any enforcement or administrative action taken against it in any other state;

(d) issuance by the department of a conditional approval to operate the facility for a specified period of time upon substantial completion of the character and competence, legal, financial and architectural components of the application, so long as the operator or its affiliate agrees in writing to satisfy all pending conditions prior to the expiration of the conditional approval period or a time frame established by the department;

(e) issuance by the department of a conditional approval to construct a facility, at the operator's or its affiliate's own risk, upon substantial completion of the architectural component of the application;

(f) elimination of duplicative submission and review of any application information which has been previously reviewed and approved by the department or any of its regional offices within the past two years through a certification process and form whereby the operator or its affiliate will attest that such application information is duplicative;

(g) with respect to any programmatic application information to be reviewed by the regional office, such review shall be conducted onsite by the regional office during the pre-opening inspection or first full annual inspection, if the department has previously approved the operator or its affiliate to operate the same type of program at another facility within the past two years;

(h) electronic submission of applications; and

(i) a combined application for licensure as an adult care facility, assisted living residence and/or assisted living program, to the extent the department determines such a combined application is feasible.

2-a. For purposes of subdivision two of this section, "affiliate" shall mean an entity, for which a majority of the ownership or controlling interest is the same as the ownership or controlling interest in an existing licensed operator under this section (provided that an affiliate may have different percentages of ownership or control or fewer natural persons with ownership or control than an existing licensed operator) and, further:

(a) for any entity owned, directly or indirectly, by natural persons:

(i) at all times, more than half of the ownership interest of the entity shall be owned, directly or indirectly, by natural persons who have previously been determined to have undergone a satisfactory determination of character, competence and standing in the community;

(ii) at all times, any owner with a direct or indirect ownership interest who has not undergone a satisfactory determination of character, competence and standing in the community review must possess a less than ten percent direct or indirect interest in the entity, until a satisfactory determination has been made; and

(iii) for any natural person proposed to be an owner, directly or indirectly, of the entity who is a controlling person, as defined in section four hundred sixty-one-b of the social services law, or is a member, director, or officer of an existing licensed operator under this section, such existing licensed operator must be in good standing with the department; and

(b) for any not-for-profit corporation or other entity not under paragraph (a) of this subdivision:

(i) more than half of the entity's total board members, directors, officers and controlling persons, as defined in section four hundred sixty-one-b of the social services law, shall have previously undergone a satisfactory determination of character, competence and standing in the community; and

(ii) if any natural person proposed to be a board member, director, or officer of the entity has an ownership interest, directly or indirectly, or is a board member, director, officer, or controlling person, as defined in section four hundred sixty-one-b of the social services law, in an existing licensed operator under this section, such existing licensed operator must also be in good standing with the department.

2-b. For purposes of subdivision two of this section, "good standing" shall mean the operator and its affiliate have not (i) received any



official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (ii) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law for a violation that has not been rectified; (iii) within the previous year, received any official written notice from the department of a proposed assessment of a civil penalty for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law; (iv) within the previous three years, been issued an order pursuant to subdivision two, five, six, or eight of section four hundred sixty-d of the social services law; (v) within the previous three years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law. Provided, however, that in the case of an operator or affiliate that is not in good standing as provided in this paragraph, the department may permit the operator or affiliate to use the streamlined application process, in its discretion, if it determines that the disqualifying violation was an isolated occurrence that was promptly corrected by the operator or affiliate.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005. Amended L.2013, c. 414, § 2, eff. Oct. 21, 2013; L.2015, c. 574, § 2, eff. Dec. 22, 2015; L.2016, c. 15, § 2, eff. Dec. 22, 2015.)

#### Research References

##### Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 198, Licensure and Other Requirements.

#### TITLE III—ENHANCED ASSISTED LIVING CERTIFICATE

#### ~~§ 4654. General requirements; applicability of laws to enhanced assisted living~~

##### ~~Research References~~

##### ~~Encyclopedias~~

~~N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 199, Enhanced Assisted Living.~~

#### ~~§ 4655. Certification procedures and requirements~~

##### ~~Research References~~

##### ~~Encyclopedias~~

~~N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 199, Enhanced Assisted Living.~~

Title III

TITLE III—ENHANCED ASSISTED LIVING CERTIFICATE

Section

4654. General requirements; applicability of laws to enhanced assisted living.  
4655. Certification procedures and requirements.

**§ 4654. General requirements; applicability of laws to enhanced assisted living**

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4654, in Article 46-A, Fee-for-Service Continuing Care, ante.]*

Nothing in this article shall require a residence to obtain an enhanced assisted living certificate pursuant to this title unless such residence elects to provide aging in place by retaining residents described in subdivision fifteen of section four thousand six hundred fifty-one of this article.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

**Library References**

Asylums and Assisted Living Facilities ⇨14.  
Westlaw Topic No. 43.  
C.J.S. Public and Private Institutional Care Facilities §§ 2, 8 to 9.

**Research References**

**Encyclopedias**

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

**§ 4655. Certification procedures and requirements**

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4655, in Article 46-A, Fee-for-Service Continuing Care, ante.]*

1. Notwithstanding any other provision of law, an assisted living operator may apply to the department to obtain an enhanced assisted living certificate pursuant to this section.

(a) Such application shall be on a form approved by the department.

(b) An assisted living operator may apply for such a certificate for the entire facility or any number of beds at the facility.

(c) To obtain an enhanced assisted living certificate, the applicant must submit a plan to the department setting forth how the additional needs of residents will be safely and appropriately met at such

residence. Such plan shall include, but need not be limited to, a written description of services, staffing levels, staff education and training, work experience, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence.

(d) In addition to any other requirements of assisted living, an operator of enhanced assisted living may hire care staff directly pursuant to standards developed by the department or contract with a home care services agency which has been approved to operate pursuant to article thirty-six of this chapter.

(e) No assisted living residence shall be certified as enhanced assisted living unless and until the applicant obtains the written approval of the department.

2. No resident shall be permitted to continue to age in place under the terms of an enhanced assisted living certificate unless the operator, the resident's physician, and, if applicable, the resident's licensed or certified home care agency, agree that the additional needs of the resident can be safely and appropriately met at the residence. A resident eligible for enhanced assisted living or his or her representative shall submit to the residence a written report from a physician, which report shall state that:

(a) the physician has physically examined the resident within the last month; and

(b) the resident is not in need of twenty-four hour skilled nursing care or medical care which would require placement in a hospital or residential health care facility.

3. The residence must notify a resident that, while the residence will make reasonable efforts to facilitate the resident's ability to age in place pursuant to an individualized service plan, there may be a point reached where the needs of the resident cannot be safely or appropriately met at the residence, requiring the transfer of the resident to a more appropriate facility in accordance with the provisions of this article.

4. If a resident reaches the point where he or she is in need of twenty-four hour skilled nursing care or medical care required to be provided by facilities licensed pursuant to article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law, then the resident must be discharged from the residence and the operator shall initiate proceedings for the termination of the residency agreement of such resident in accordance with the provisions of section four hundred sixty-one-h of the social services law.

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# ENHANCED ASSISTED LIVING CERTIFICATE Title III

§ 4655

Provided, however, a resident may remain at the residence if each of the following conditions are met:

(a) a resident in need of twenty-four hour skilled nursing care or medical care hires appropriate nursing, medical or hospice staff to care for his or her increased needs;

(b) the resident's physician and home care services agency both determine and document that, with the provision of such additional nursing, medical or hospice care, the resident can be safely cared for in the residence, and would not require placement in a hospital, nursing home or other facility licensed under article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law;

(c) the operator agrees to retain the resident and to coordinate the care provided by the operator and the additional nursing, medical or hospice staff; and

(d) the resident is otherwise eligible to reside at the residence.

5. In addition to the requirements otherwise required for licensure as assisted living, any residence that advertises or markets itself as serving individuals with special needs, including, but not limited to, individuals with dementia or cognitive impairments, must submit a special needs plan to the department setting forth how the special needs of such residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to, a written description of specialized services, staffing levels, staff education and training, work experience, professional affiliations or special characteristics relevant to serving persons with special needs, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence. In approving an application for special needs certification, the department shall develop standards to ensure adequate staffing and training in order to safely meet the needs of the resident. The standards shall be based upon recommendations of the task force established by section five of the chapter of the laws of two thousand four which added this section. No residence shall market themselves as providing specialized services unless and until the department has approved such applicant for a special needs assisted living certificate.

6. An enhanced assisted living certificate shall not be required of an adult care facility, or part thereof, which has obtained approval by the department to operate an assisted living program pursuant to section four hundred sixty-one-l of the social services law. Provided,

however, such exemption shall only apply to those beds at the facility which are subject to the assisted living program.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

#### Library References

Asylums and Assisted Living Facilities § 14.  
Health § 236.  
Westlaw Topic Nos. 43, 198H.  
C.J.S. Hospitals §§ 6 to 10.  
C.J.S. Public and Private Institutional Care Facilities §§ 2, 8 to 9.

#### Research References

##### Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

#### Notes of Decisions

##### Regulations 1

##### 1. Regulations

Personnel regulation issued by Commissioner of Department of Health requiring enhanced assisted living residences (EALRs) and special needs assisted living residences (SNALR) to have registered nurse on duty on site eight hours a day, five days a week and a licensed practical nurse on duty eight hours a day, two days a

week violated Assisted Living Reform Act, which provided that an individualized service plan was to be developed for each resident in consultation with the resident's physician and that a physician was required to report that a resident was not in need of 24-hour skilled nursing care for the resident to be eligible to live in an EALR. *Empire State Ass'n of Assisted Living, Inc. v. Daines*, 2009, 26 Misc.3d 340, 887 N.Y.S.2d 452. *Asylums And Assisted Living Facilities* § 20

### TITLE IV—GENERAL REQUIREMENTS

#### Section

- 4656. General requirements; applicability of laws to assisted living and enhanced assisted living.
- 4657. Residency admission.
- 4658. Residency agreement and disclosures.
- 4659. Individualized service plan.
- 4660. Rights of residents in assisted living residences.
- 4661. Resident funds.
- 4662. Powers of the commissioner.
- 4663. Penalties and enforcement.

#### § 4656. General requirements; applicability of laws to assisted living and enhanced assisted living

[Added by L.2004, c. 2, § 2. See, also, *Public Health Law* § 4656, in *Article 46-A, Fee-for-Service Continuing Care, ante.*]

## TITLE IV—GENERAL REQUIREMENTS

## Section

4656. General requirements; applicability of laws to assisted living and enhanced assisted living.

**§ 4656. General requirements; applicability of laws to assisted living and enhanced assisted living**

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4656, in Article 46-A, Fee-For-Service Continuing Care Retirement Communities Demonstration Program, ante.]*

1. No entity shall establish, operate, provide, conduct, or offer assisted living in this state, or hold itself out as an entity which otherwise meets the definition of assisted living or advertise itself as assisted living or by a similar term, without obtaining the approval of the department to operate as an adult care facility pursuant to title two of article seven of the social services law, obtaining the approval of the department as required in this article, and otherwise acting in accordance with this article. Provided however that an entity may simultaneously apply for approval to operate as an adult care facility and as an assisted living residence pursuant to this article. This subdivision shall not apply to assisted living programs approved by the department pursuant to section four hundred sixty-one-l of the social services law.

2. An assisted living operator shall comply with all applicable statutes, rules and regulations required for maintaining a valid operating certificate issued pursuant to title two of article seven of the social services law and shall obtain and maintain all other licenses, permits, registrations, or other governmental approvals required in addition to requirements under this article.

3. Approval for licensure or certification pursuant to this article may be granted only to an applicant who satisfactorily demonstrates:

(a) that such applicant possesses a valid operating certificate to operate as an adult home or enriched housing program pursuant to article seven of the social services law. An applicant that does not currently possess such operating certificate as an adult home or enriched housing program may simultaneously apply and be approved for such certificate and all other licenses and certifications authorized under this article;

(b) that such applicant which has an existing valid adult care facility operating certificate, is in good standing with the department. For purposes of this subdivision, good standing shall mean the applicant has not (i) received any official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (ii) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law for a violation that has not been rectified; (iii) within the previous year, received any official written notice from the department of a proposed assessment of a civil



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penalty for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law; (iv) within the previous three years, been issued an order pursuant to subdivision two, five, six, or eight of section four hundred sixty-d of the social services law; (v) within the previous three years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law. Provided however that in the case of an applicant which otherwise meets the requirements of this section, but is not in good standing as provided in this paragraph, the department may approve said applicant if it determines that the applicant is of good moral character and is competent to operate the residence. Such character and competence review shall be limited to applicants not in good standing pursuant to this paragraph or an applicant subject to paragraph (f) of this subdivision. As part of the review provided pursuant to this paragraph, the department shall, on its webpage, solicit and consider public comment;

(c) that such applicant has adequate financial resources to provide such assisted living as proposed;

(d) that the building, equipment, staff, standards of care and records to be employed in the operation comply with applicable statutes and any applicable local law;

(e) that any license or permit required by law for the operation of such residence has been issued to such operator; and

(f) in the case of an applicant which does not have an existing valid adult care facility operating certificate, such applicant shall otherwise comply with the provisions for certification as prescribed by article seven of the social services law.

4. The department shall develop an expedited review and approval process for applications for up to nine additional beds to an existing enhanced or special needs assisted living certificate qualified as being in good standing under section forty-six hundred fifty-three of this article.

5. The knowing operation of an assisted living or enhanced assisted living residence without the prior written approval of the department shall be a class A misdemeanor.

6. Every assisted living residence that is required to possess an assisted living residence license shall be licensed on a biennial basis and shall pay a biennial licensure fee. Such fee shall be five hundred dollars per license, with an additional fee of fifty dollars per resident whose annual income is above four hundred percent of the federal poverty level. Such additional fee shall be based on the total occupied beds at the time of application, up to a maximum biennial licensure fee of five thousand dollars. Said fee shall be in addition to the fee charged by the department for certification as an adult care facility. Every assisted living residence that applies for an enhanced assisted living certificate or a special needs assisted living certificate shall pay an additional biennial fee, in addition to any other fee required by this subdivision, in the amount of two thousand dollars, provided that for any residence applying for both an enhanced assisted living certificate

and a special needs assisted living certificate the amount of such fee shall be three thousand dollars.

7. The requirements of this article shall be in addition to those required of an adult care facility. In the event of a conflict between any provision of this article and a provision of article seven of the social services law or a regulation adopted thereunder, the applicable provision of this article or the applicable regulation shall supersede article seven of the social services law or the applicable regulation thereunder to the extent of such conflict.

8. The assisted living operator shall not use deceptive or coercive marketing practices to encourage residents or potential residents to sign or reauthorize the residency agreement required pursuant to section four thousand six hundred fifty-eight of this article.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005. Amended L.2014, c. 60, pt. A, § 33, eff. March 31, 2014, deemed eff. April 1, 2014.)

#### Research References

##### Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 198, Licensure and Other Requirements.

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 200, Applicable Laws.

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 204, Penalties.

#### § 4657. Residency admission

##### Research References

##### Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 201, Admission.

#### § 4658. Residency agreement and disclosures

##### Research References

##### Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 201, Admission.

#### § 4659. Individualized service plan

##### Research References

##### Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 202, Individualized Service Plan.

#### § 4660. Rights of residents in assisted living residences

##### Research References

##### Encyclopedias

N.Y. Jur. 2d Hospitals and Related Health Care Facilities § 203, Residents' Rights.



# GENERAL REQUIREMENTS

## Title IV

required by this subdivision, in the amount of two thousand dollars, provided that for any residence applying for both an enhanced assisted living certificate and a special needs assisted living certificate the amount of such fee shall be three thousand dollars.

7. The requirements of this article shall be in addition to those required of an adult care facility. In the event of a conflict between any provision of this article and a provision of article seven of the social services law or a regulation adopted thereunder, the applicable provision of this article or the applicable regulation shall supersede article seven of the social services law or the applicable regulation thereunder to the extent of such conflict.

8. The assisted living operator shall not use deceptive or coercive marketing practices to encourage residents or potential residents to sign or reauthorize the residency agreement required pursuant to section four thousand six hundred fifty-eight of this article.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

### Library References

Asylums and Assisted Living Facilities ⇨ 14.  
Health ⇨ 236.  
Westlaw Topic Nos. 43, 198H.  
C.J.S. Hospitals §§ 6 to 10.  
C.J.S. Public and Private Institutional Care Facilities §§ 2, 8 to 9.

### Research References

Encyclopedias  
NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

### Notes of Decisions

#### Regulations 1

##### 1. Regulations

Regulation issued by Commissioner of Department of Health requiring that Department pre-approve sale of real estate associated with an assisted living residence (ALR) facility exceeded scope of Commissioner's authority under Assisted Living Reform Act, and thus nullification of regulation was warranted, though Social Service Law gave Department

authority to inquire into general management and financial condition of such facilities, and Act provided that operators were required to comply with applicable statutes required for maintaining valid operating certificate pursuant to Social Services law; power to inquire into financial affairs did not equate to power to restrict sale of property. *Empire State Ass'n of Assisted Living, Inc. v. Daines*, 2009, 26 Misc.3d 340, 887 N.Y.S.2d 452. Asylums And Assisted Living Facilities ⇨ 14

## § 4657. Residency admission

[Added by L.2004, c. 2, § 2. See, also, *Public Health Law § 4657, in Article 46-A, Fee-for-Service Continuing Care, ante.*]

1. An assisted living operator shall conduct an initial pre-admission evaluation of a prospective resident to determine whether or not the individual is appropriate for admission to the assisted living residence. Such evaluation shall be conducted by the operator and, if necessary, in conjunction with a home care services agency or appropriate employee pursuant to paragraph (d) of subdivision one of section four thousand six hundred fifty-five of this article. The operator shall conduct all such evaluations using an evaluation tool developed by the department, to be based on the recommendations of the task force created pursuant to section five of the chapter of the laws of two thousand four which added this section or one developed by the operator that receives approval by the department.

2. The assisted living operator shall not admit any resident if the operator is not able to meet the care needs of the resident within the scope of services authorized under this article, and the individualized service plan; provided, further that no operator shall admit any resident in need of twenty-four hour skilled nursing care.

3. (a) At the time of the admission to an assisted living residence, a resident shall submit to the facility a written report from a physician, a physician assistant or a nurse practitioner, which report shall state:

(i) that the physician, physician assistant or nurse practitioner has physically examined the resident within one month and the date of such examination;

(ii) that the resident is not in need of acute or long term medical or nursing care which would require placement in a hospital or residential health care facility; and

(iii) that the resident is not otherwise medically or mentally unsuitable for care in the facility.

(b) For the purpose of creating an accessible and available record and assuring that a resident is properly placed in such a facility, the report shall contain the resident's significant medical history and current conditions, the prescribed medication regimen, recommendations for diet, the assistance needed in the activities of daily living, and where appropriate, recommendations for exercise, recreation and frequency of medical examinations.

(c) Such resident shall thereafter be examined by a physician, a physician assistant or a nurse practitioner at least annually, and shall submit an annual written report in conformity with the provisions of this subdivision.

(d) Following a resident's stay in a hospital or residential health care facility, upon return to the assisted living residence, the assisted

# GENERAL REQUIREMENTS

## Title IV

living residence shall not be required to obtain the report in paragraph (a) of this subdivision, and instead shall obtain a statement from the discharging facility which shall:

(i) state that the resident is appropriate to return to the residence; and

(ii) include the reason for the stay, the treatment plan to be followed, and any new or changed orders, including medications.

The statement shall be completed by a physician, a physician assistant or a nurse practitioner.

(e) Nothing required in this subdivision shall require the use of an identical form in adult care facilities and assisted living residences, either upon admission or return.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005. Amended L.2011, c. 168, § 1, eff. July 20, 2011.)

### Library References

Asylums and Assisted Living Facilities § 21.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities § 11.

### Research References

#### Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

## § 4658. Residency agreement and disclosures

[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4658, in Article 46-A, Fee-for-Service Continuing Care, ante.]

1. Every operator shall execute with each resident a written residency agreement, in no less than twelve point type and written in plain language, which satisfies the requirements of this section. Such agreement shall:

(a) be dated and signed by the operator, the resident, resident's representative, and resident's legal representative, if any, and any other party to be charged under the agreement;

(b) contain the entire agreement of the parties and shall include the disclosures required by subdivision three of this section.

1-a. The resident, resident's representative and resident's legal representative, if any, shall be given a complete copy of the agreement and all supporting documents and attachments and any changes whenever changes are made to the agreement.

2. The residency agreement shall include, at a minimum:

(a) the name, telephone number, street address and mailing address of the residence;

(b) the name and mailing address of the owner of the residence and at least one natural person authorized to accept personal service on behalf of the owner of the residence;

(c) the name and address of the assisted living operator and at least one natural person authorized to accept personal service on behalf of the operator;

(d) a statement, to be updated as necessary, describing the licensure or certification status of the assisted living operator and any provider offering home care services or personal care services under an arrangement with the residence, including a specific listing of such providers;

(e) the effective period of the agreement;

(f) a description of the services to be provided to the resident and the base rate to be paid by the resident for those services;

(g) a description of any additional services available for an additional, supplemental, or community fee from the assisted living operator directly or through arrangements with the operator, stating who would provide such services, if other than such operator;

(h) a rate or fee schedule, including any additional, supplemental, or community fees charged for services provided to the resident, with a detailed explanation of which services and amenities are covered by such rates, fees, or charges;

(i) a description of the process through which the agreement may be modified, amended, or terminated, and setting forth the terms and time frames under which the agreement may be terminated by either party;

(j) a description of the complaint resolution process available to residents;

(k) the name of the resident's representative and resident's legal representative, if any, and a description of the representative's responsibilities;

(l) the criteria used by the operator to determine who may be admitted and who may continue to reside in the residence, including criteria related to the resident's care needs and compliance with reasonable rules of the residence;

(m) procedures and standards for termination of contract, discharge and transfer to another dwelling or facility;

- (n) billing and payment procedures and requirements;
  - (o) procedures in the event the resident, resident's representative or resident's legal representative are no longer able to pay for services provided for in the resident agreement or for additional services or care needed by the resident; and
  - (p) terms governing the refund of any previously paid fees or charges in the event of a resident's discharge from the assisted living residence or termination of the resident agreement.
3. In conjunction with any marketing materials and with the residency agreement required by this section, the assisted living operator shall disclose on a separate information sheet in plain language and in twelve point type the following to (a) any individual who expresses an interest in residing in the residence, and to his or her designated representative and his or her legal representative, if any, upon request or prior to admission, whichever occurs first, and (b) any current resident and to his or her designated representative and his or her legal representative, if any, if such information has not previously been disclosed to them:
- (i) the consumer information guide developed by the commissioner pursuant to subdivision one of section forty-six hundred sixty-two of this title;
  - (ii) a statement listing the residence's licensure and if it has an enhanced assisted living certificate and/or special needs enhanced assisted living certificate and the availability of enhanced assisted living and/or special needs beds;
  - (iii) any ownership interest in excess of ten percent on the part of the operator, whether legal or beneficial, in any entity which provides care, material, equipment or other services to residents;
  - (iv) any ownership interest in excess of ten percent on the part of any entity which provides care, material, equipment or other services to residents, whether legal or beneficial, in the operator;
  - (v) a statement regarding the ability of residents to receive services from service providers with whom the operator does not have an arrangement;
  - (vi) a statement that residents shall have the right to choose their health care providers, notwithstanding any other agreement to the contrary;
  - (vii) a statement regarding the availability of public funds for payment for residential, supportive or home health services including, but not limited to availability of coverage of home health services under title eighteen of the federal social security act (Medicare);

(viii) the department's toll free telephone number for reporting of complaints regarding home care services and the services provided by the assisted living operator; and

(ix) a statement regarding the availability of long term care ombudsman services and the telephone number of the local and state long term care ombudsman.

4. Assisted living residency agreements and related documents executed by each resident, resident's representative or resident's legal representative shall be maintained by the operator in files from the date of execution until three years after the agreement is terminated. The agreements shall be made available for inspection by the commissioner upon request at any time.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

#### Library References

Asylums and Assisted Living Facilities §19.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities § 13.

#### Research References

##### Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

### § 4659. Individualized service plan

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4659, in Article 46-A, Fee-for-Service Continuing Care, ante.]*

1. A written individualized service plan shall be developed for each resident of an assisted living residence upon admission.

2. The individualized service plan shall be developed with the resident, the resident's representative and resident's legal representative if any, the assisted living operator, and if necessary a home care services agency. The initial individualized service plan shall be developed in consultation with the resident's physician; provided such consultation is documented in writing by the residence. If a resident is determined by his or her physician not to be in need of home care services, the participation of a home care services agency in an evaluation conducted pursuant to this subdivision shall not be necessary.

3. The individualized service plan shall be developed in accordance with the medical, nutritional, rehabilitation, functional, cognitive and other needs of the resident.

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provided, and how and by whom services will be provided and  
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5. The individualized service plan shall be reviewed and revised  
as frequently as necessary to reflect the changing care needs of the  
resident, but no less frequently than every six months. To the extent  
necessary, such review and revision shall be undertaken in consulta-  
tion with the resident's physician.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

#### Library References

Asylums and Assisted Living Facilities *§* 20  
Health *§* 579.  
Westlaw Topic Nos. 43, 198H.  
C.J.S. Physicians, Surgeons, and Other Health-Care Providers *§§* 79 to 80.  
C.J.S. Public and Private Institutional Care Facilities *§* 12.

#### Research References

##### Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

#### Notes of Decisions

##### Regulations 1

##### 1. Regulations

Personnel regulation issued by Com-  
missioner of Department of Health  
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resident to be eligible to live in an  
EALR. Empire State Ass'n of Assist-  
ed Living, Inc. v. Daines, 2009, 26  
Misc.3d 340, 887 N.Y.S.2d 452. Asy-  
lums And Assisted Living Facilities *§* 20

#### § 4660. Rights of residents in assisted living residences

[Added by L.2004, c. 2, § 2. See, also, Public Health Law  
§ 4660, in Article 46-A, Fee-for-Service Continuing Care,  
*ante.*]

1. The principals enunciated in subdivision three of this section  
are declared to be the public policy of the state and a copy of such  
statement of rights and responsibilities shall be posted conspicuously  
in a public place in each residence covered hereunder.

2. Every assisted living residence shall adopt and make public a  
statement of the rights and responsibilities of the residents residing in

such residence, and shall treat such residents in accordance with the provisions of such statement.

3. Resident's rights and responsibilities shall include, but not be limited to the following:

(a) every resident's participation in assisted living shall be voluntary, and prospective residents shall be provided with sufficient information regarding the residence to make an informed choice regarding participation and acceptance of services;

(b) every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed;

(c) every resident shall have the right to have private communications and consultations with his or her physician, attorney, and any other person;

(d) every resident, resident's representative and resident's legal representative, if any, shall have the right to present grievances on behalf of himself or herself or others, to the residence's staff, administrator or assisted living operator, to governmental officials, to long term care ombudsmen or to any other person without fear of reprisal, and to join with other residents or individuals within or outside of the residence to work for improvements in resident care;

(e) every resident shall have the right to manage his or her own financial affairs;

(f) every resident shall have the right to have privacy in treatment and in caring for personal needs;

(g) every resident shall have the right to confidentiality in the treatment of personal, social, financial and medical records, and security in storing personal possessions;

(h) every resident shall have the right to receive courteous, fair and respectful care and treatment and a written statement of the services provided by the residence, including those required to be offered on an as-needed basis;

(i) every resident shall have the right to receive or to send personal mail or any other correspondence without interception or interference by the operator or any person affiliated therewith;

(j) every resident shall have the right not to be coerced or required to perform the work of staff members or contractual work;

(k) every resident shall have the right to have security for any personal possessions if stored by the operator;



(l) every resident shall have the right to receive adequate and appropriate assistance with activities of daily living, to be fully informed of their medical condition and proposed treatment, unless medically contraindicated, and to refuse medication, treatment or services after being fully informed of the consequences of such actions, provided that an operator shall not be held liable or penalized for complying with the refusal of such medication, treatment or services by a resident who has been fully informed of the consequences of such refusal;

(m) every resident and visitor shall have the responsibility to obey all reasonable regulations of the residence and to respect the personal rights and private property of the other residents;

(n) every resident shall have the right to include their signed and witnessed version of the events leading to an accident or incident involving such resident in any report of such accident or incident;

(o) every resident shall have the right to receive visits from family members and other adults of the resident's choosing without interference from the assisted living residence; and

(p) every resident shall have the right to written notice of any fee increase not less than forty-five days prior to the proposed effective date of the fee increase, provided however providing additional services to a resident shall not be considered a fee increase pursuant to this paragraph.

Waiver of any provision contained within this subdivision shall be void;

4. Each assisted living operator shall give a copy of the statement of rights and responsibilities to each resident at or prior to the time of admission to the residence, the resident's representative and resident's legal representative, if any, and to each member of the residence's staff and any current resident.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

**Library References**

Asylums and Assisted Living Facilities §20.  
Health §582.  
Westlaw Topic Nos. 43, 198H.  
C.J.S. Hospitals § 20.  
C.J.S. Public and Private Institutional Care Facilities § 12.

**Research References**

**Encyclopedias**

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

Notes of Decisions

Regulations 1

1. Regulations

Commissioner of the Department of Health exceeded his authority in issuing regulation governing rights of residents of assisted living residences (ALRs) to notice

of fee increases, and thus nullification of regulation was warranted, since regulation placed notice conditions on a change in services that was not contemplated by the Assisted Living Reform Act. *Empire State Ass'n of Assisted Living, Inc. v. Daines*, 2009, 26 Misc.3d 340, 887 N.Y.S.2d 452. Asylums And Assisted Living Facilities ⇨ 24

§ 4661. Resident funds

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4661, in Article 46-A, Fee-for-Service Continuing Care, ante.]*

An assisted living operator or employee of a residence or any other entity which is a representative payee of a resident of such residence pursuant to designation by the social security administration or which otherwise assumes management responsibility over the funds of a resident shall maintain such funds in a fiduciary capacity to the resident. Any interest on money received and held for the resident shall be the property of the individual resident.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

Library References

Asylums and Assisted Living Facilities ⇨22, 24.  
Fraud ⇨7.  
Westlaw Topic Nos. 43, 184.  
C.J.S. Fraud §§ 5 to 11, 14 to 15.

Research References

Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

§ 4662. Powers of the commissioner

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4662, in Article 46-A, Fee-for-Service Continuing Care, ante.]*

1. The commissioner is hereby authorized to:

(a) develop, in consultation with the director of the state office for the aging, consumers, operators of assisted living residences and home care service agency providers, a consumer information guide to inform and assist the consumer in the selection of an assisted living residence;

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(b) promulgate, in consultation with the director of the state office for the aging, such rules and regulations as are necessary to implement the provisions of this article;

(c) receive and investigate complaints regarding the condition, operation and quality of care of any entities holding themselves out as assisted living, or advertising themselves by a similar term;

(d) make necessary investigations to procure information required to implement the provisions of this article; and

(e) exercise all other powers and functions as are necessary to implement the provisions of this article.

2. Nothing in this section shall restrict the availability of powers otherwise available to the commissioner under the provisions of this chapter and under the social services law.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

#### Library References

Asylums and Assisted Living Facilities ⇨18.

Health ⇨256.

Westlaw Topic Nos. 43, 198H.

C.J.S. Hospitals § 18.

C.J.S. Public and Private Institutional Care Facilities §§ 4 to 6.

#### Research References

##### Encyclopedias

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. 137.5, Assisted Living.

### § 4663. Penalties and enforcement

*[Added by L.2004, c. 2, § 2. See, also, Public Health Law § 4663, in Article 46-A, Fee-for-Service Continuing Care, ante.]*

Any person who violates any provision of this article or any rule or regulation promulgated by the department, or the terms or conditions of any order or permit issued by the department pursuant to this article, shall be subject to the maximum penalties which may be levied against a licensed adult care facility.

(Added L.2004, c. 2, § 2, eff. Feb. 23, 2005.)

#### Library References

Asylums and Assisted Living Facilities ⇨29.

Health ⇨248.

Westlaw Topic Nos. 43, 198H.

## Village

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ALL (/LEGISLATION/LAWS/ALL) / CONSOLIDATED (/LEGISLATION/LAWS/CONSOLIDATED)  
/ VILLAGE (/LEGISLATION/LAWS/VIL) / ARTICLE 7 (/LEGISLATION/LAWS/VIL/A7) / SECTION 7-725-B

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§ 7-725-b Approval of special use permits. 1. Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning local law, subject to requirements imposed by such local law to assure that the proposed use is in harmony with such local law and will not adversely affect the neighborhood if such requirements are met.

2. Approval of special use permits. The village board of trustees may, as part of a zoning local law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such local law.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section 7-712-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the village.

5. Waiver of requirements. The village board of trustees may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found

not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

6. Public hearing and decision on special use permits. The authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the village at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the village clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

7. Notice to applicant and county planning board or agency or regional planning council. At least ten days before such hearing, the authorized board shall mail notices thereof to the applicant and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

8. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

9. Court review. Any person aggrieved by a decision of the planning board or such other designated body or any officer, department, board or bureau of the village may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the village clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

10. Costs. Costs shall not be allowed against the planning board or other administrative body designated by the village board of trustees unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed

from.

11. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

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[< SECTION 7-725-A - SITE PLAN REVIEW \(/LEGISLATION/LAWS/VIL/7-725-A/\)](#)

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