VERMONT

Licensure Terms

Assisted Living Residence, Residential Care Home

General Approach

The state licenses two settings that provide housing, meals, and supportive services to adults who cannot live independently but do not require the type of care provided in a nursing home: assisted living residences (ALRs) and residential care homes (RCHs). RCHs are divided into two groups depending on the level of care they provide--Level III or Level IV.

Assisted living regulations require private apartments that promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity. As well as meeting their own licensing requirements, ALRs must meet Level III RCH licensing requirements.

Special care units (SCUs) that provide specialized services to a specific population must meet RCH licensing requirements, which are incorporated by reference into the ALR licensing regulations.

Services in both settings are covered by the Medicaid State Plan program and the 1115 Choices for Care Waiver program. Licensed ALRs and RCHs must be enrolled as Medicaid providers. Requests for continued participation in the Medicaid program must be submitted on an annual basis with the license re-application.

Adult Foster Care. Adult family care is a new Medicaid option provided under the Choices for Care Waiver program to individuals in the highest and high-needs groups. Authorized Agencies contract with private, unlicensed family homes to provide 24-hour care and room and board to 1-2 people who are not related to the home provider. Services include (but are not limited to) personal care, companion, and adult day services. Providers may also serve residents on a respite basis. Adult family care providers who serve only private pay residents are not regulated by the state. The Medicaid regulatory provisions for adult family care are not included in this profile but a link to them can found at the end.

¹ Choices for Care participants are assigned to three groups based on an assessment: highest needs, high-needs, and moderate needs.

² The Authorized Agency must be authorized by the Vermont Department of Disabilities, Aging and Independent Living and must meet the adult family care qualifications, standards and responsibilities.

This profile includes summaries of selected regulatory provisions for ALRs and RCHs. The complete regulations are online at the links provided at the end.

Definitions

Assisted living residence means a program or facility that combines housing and health and other services to support residents' independence and aging in place. In addition to the services specified in Level III RCH regulations, ALRs are required to offer a private bedroom, private bathroom, living space, kitchen capacity, and a lockable door.

Residential care homes serve three or more residents, who are unrelated to the licensee, and are licensed as either Level III or Level IV. Both licensure levels must provide room and board, assistance with personal care, general supervision, and medication management.³ Level III homes must provide the additional service of nursing overview.⁴

Resident Agreements

Assisted Living Residences. The terms of occupancy of a resident unit, together with information about any utilities, maintenance, or management services provided by the facility, must be included in a written admission agreement and, if applicable, a written lease separate from the admission agreement. When a separate lease agreement regarding the resident unit is entered into, the existence of that agreement must be noted in the admission agreement.

In addition, information with regard to payment for services and transfer and discharge policies are required by the following RCH licensing regulations.

Residential Care Homes. Prior to or at the time of admission, each resident, and the resident's legal representative, if any, must be provided with a written admission agreement that describes the daily, weekly, or monthly rate to be charged; the services included in the rate; and all other applicable financial issues. The agreement must also specify how services will be provided, transfer and discharge rights, and refund policies.

Medicaid Programs. Resident agreements for Level III homes and ALRs that participate in the Medicaid programs must disclose the provider's policies about

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³ Medication management means a formal process of: (1) assisting residents to self-administer their medications; or (2) administering medications, under the supervision of and delegation by RNs, to designated residents by designated staff of the home. It includes procuring and storing medications, assessing the effects of medications, documentation, and collaborating with the residents' personal physicians.

⁴ Nursing overview means a process in which a nurse ensures that the health and psychosocial needs of the resident are met. The process includes observation, assessment, goal setting, staff education, and the development, implementation, and evaluation of a written, individualized treatment plan to maintain the resident's well-being.

accepting Supplemental Security Income (SSI) and/or Medicaid payments. Agreements with Medicaid participants must include a description of the Medicaid services to be provided, the room and board rate, the personal needs allowance (PNA) amount, and the provider's agreement to accept room and board and Medicaid as the sole payment.

Disclosure Provisions

Assisted Living Residences. A facility must state in a uniform consumer disclosure the services it will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the residence, and any physical plant features that vary from the ALR regulations. The disclosure must also include information about service packages, tiers and rates, and reasons for rate increases. The required information must be entered on a form provided by the licensing agency and must be available to residents prior to or at admission, to the public upon request, and must be noted prominently in all marketing brochures and written materials.

A facility that has specialized programs, such as a dementia care unit, must include a written statement of the program's philosophy and mission and a description of how the ALR can meet residents' specialized needs, and also meet the following RCH licensing requirements.

Residential Care Homes. If there are specialized programs offered, such as a dementia care unit, the facility must obtain approval from the licensing agency prior to establishing and operating the program. To obtain approval, the facility must provide all of the following:

- A statement outlining the philosophy, purpose, and scope of services to be provided.
- A definition of the categories of residents to be served.
- A description of the organizational structure of the unit consistent with the unit's philosophy, purpose, and scope of services.
- A description and identification of the physical environment.
- The criteria for admission, continued stay, and discharge.
- A description of unit staffing, including staff qualifications, orientation, in-service education and specialized training, and medical management and credentialing as-necessary.

Admission and Retention Policy

The following admission and retention requirements in each setting also apply to residents in SCUs within the setting.

Assisted Living Residences. The facility may accept and retain any individual-including those whose needs meet the definition of nursing home level of care if those needs can be met by the ALR--with the following exceptions: an individual who: (1) has a serious, acute illness requiring the medical, surgical, or nursing care provided by a general or special hospital; (2) needs a ventilator or respirator; (3) needs treatment for a Stage III or IV decubitus ulcer; or (4) requires nasopharangeal, oral or trachial suctioning, or two-person assistance to transfer from bed or chair or to ambulate.

A current resident who develops a need for equipment, treatment, or care as listed above or who develops a terminal illness may remain in the residence so long as the facility can safely meet the resident's needs and/or the resident's care needs are met by an appropriate licensed provider.

The expectation is that individuals will be permitted to age in place provided that their mobility, ambulation, and transfer needs can be met by one staff person; cognitive impairment is at a moderate or lesser degree of severity; and behavioral symptoms consistently respond to appropriate intervention.

Residents may only be involuntarily discharged if: (1) they are not capable of entering into a negotiated risk agreement and they pose a serious threat to self, staff, or other residents that cannot be resolved through care planning and interventions; or (2) the resident has care needs that the residence can no longer meet.

Residential Care Homes. The facility may not accept or retain as a resident any individual who meets the level of care eligibility criteria for nursing home admission; has care needs that exceed what the home is able to safely and appropriately provide; or has a serious, acute illness requiring the medical, surgical, or nursing care of a general or special hospital. On admission, each resident must have a physician's statement with a medical diagnosis, including psychiatric diagnosis if applicable.

Homes may retain residents who need nursing services beyond nursing overview and medication management if they meet a number of conditions specified in the regulations, including the following: (1) residents receiving such care are fully informed of their options and agree to receive such care in the home; (2) the home is able to meet the resident's needs without detracting from services needed by other residents; and (3) the nursing service provided is limited in nature or is provided by a Medicare-certified Hospice program.

The following services are not permitted in a RCH except under a variance⁵ granted by the licensing agency: intravenous therapy, ventilators or respirators, daily catheter irrigation, feeding tubes, care of Stage III or IV decubitus ulcers, suctioning, and sterile dressings. Variances are considered and issued on a case-by-case basis.

⁵ Variance means a written determination from the licensing agency, based upon the written request of a licensee, which temporarily and, in limited, defined circumstances, waives the need for compliance with a specific regulation.

Residents may be discharged only when their care needs exceed those for which the home is licensed to provide--or approved through a variance--or when the home is unable to meet the resident's assessed needs, or the resident presents a threat to his or herself or to the welfare of other residents or staff.

Services

Assisted Living Residences. A facility must provide personal care and supportive services, which may include nursing services, to meet residents' needs, and also provide the following: (1) a daily program of activities and socialization opportunities, including periodic access to community resources; and (2) social services, which include information, referral and coordination with other appropriate community programs and resources, such as hospice, home health, transportation, and other services necessary to support the resident who is aging in place.

Residents who have an identified acute or chronic medical problem or who are deemed to need nursing overview or supervision must be under the continuing general supervision of a physician of their choosing.

Residential care homes provide personal care, medication management, transportation for medical services and local community functions, laundry, and additionally in Level III homes, nursing overview.

Service Planning

Assisted Living Residences. The facility, the resident, and/or the resident's legal representative must work together to develop and maintain a written resident care plan that describes the resident's assessed needs and choices and supports the resident's dignity, privacy, choice, individuality, and independence. The facility must review the plan at least annually, and whenever the resident's condition or circumstances warrant a review, including whenever a resident's decision, behavior, or action places the resident or others at risk of harm or the resident is incapable of engaging in a negotiated risk agreement.

Whenever the facility determines that a resident's decision, behavior, or action places the resident or others at risk of harm, the facility must initiate a service negotiation process to address the identified risk and to reach a mutually agreed-upon plan of action. A negotiated risk agreement does not constitute a waiver of liability.

The following rules for RCHs also apply to ALRs.

Residential Care Homes. An assessment must be completed for each resident within 14 days of admission, consistent with a physician's diagnosis and orders, using an assessment instrument provided by the licensing agency. The resident's abilities regarding medication management must be assessed within 24 hours and nursing

delegation implemented, if necessary. If a resident requires nursing overview or nursing care, he or she must be assessed by a licensed nurse within 14 days of admission to the home or the commencement of nursing services, using an assessment instrument provided by the licensing agency. Each resident must also be reassessed annually and at any point in which the resident's physical or mental condition changes.

Third-Party Providers

Assisted Living Residences. Residents have the right to arrange for third-party services, not available through the ALR, through a provider of their choice.

Residential Care Homes. Residents of Level III or Level IV RCHs may receive home health services on a resident-specific basis to provide care the home cannot readily provide, including skilled nursing, speech therapy, physical therapy and occupational therapy on an intermittent basis (less than three times per week) or more intensively for a short term (up to 7 days a week for no more than 60 days) to the extent agreed upon by the service provider and the resident if all other provisions of the licensing regulations are met.

If a resident requires skilled nursing services from a home health agency because the home cannot provide the services and the services will continue for more than 60 days, the home must request a variance in writing from the licensing agency to retain the resident.

Medication Provisions

The following requirements of the RCH licensing regulations apply to both ALRs and RCHs.

The facility manager is responsible for ensuring that all medications are handled according to the home's policies and that designated staff are fully trained in medication policies and procedures.

Residents who are capable of self-administration may purchase and self-administer over-the-counter medications. However, the facility must make every reasonable effort to be aware of such medications and monitor and educate residents about possible adverse reactions or interactions with other medications. If a resident's over-the-counter medications use poses a significant threat to the resident's health, staff must notify the physician.

Staff responsible for assisting residents with medications must receive training in the following areas from a licensed nurse:

• The basis for determining "assistance" versus "administration," and policies and procedures for assisting with medications.

- Residents' right to direct their own care, including the right to refuse medications.
- Proper techniques for assisting with medications, including hand-washing and checking for the right resident, medication, dose, time, and route.
- Signs, symptoms, and likely side effects to be aware of for any medication a resident receives.

If a resident requires medication administration, unlicensed staff may administer medications under the following conditions:

- A registered nurse (RN) must delegate the responsibility for the administration of specific medications to designated staff for designated residents.
- The RN must accept responsibility for the proper administration of medications, including: (1) teaching designated staff proper techniques for medication administration and providing appropriate information about the resident's condition, relevant medications, and potential side effects; (2) establishing a process for routine communication with designated staff about the resident's condition and the effect of medications, as well as changes in medications; (3) assessing the resident's condition and the need for any changes in medications; and (4) monitoring and evaluating the designated staff performance in carrying out the nurse's instructions.
- All medications must be administered by the person who prepared the doses unless the nurse responsible for delegation approves of an alternative method of medication preparation and administration.

Staff other than a nurse may administer PRN psychoactive medications⁶ only when the home has a written plan for their use that describes the specific indications for administering the medication.

Staff other than a nurse may administer insulin injections only when: (1) the diabetic resident's condition and medication regimen is considered stable by the RN who is responsible for delegating the administration; (2) the designated staff to administer insulin to the resident have received additional training in the administration of insulin and the responsible RN has deemed them competent; and (3) the RN monitors the resident's condition regularly and is available when changes in condition or medication might occur.

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⁶ PRN medication means medication ordered by the physician that is not to be administered routinely but is prescribed to be taken only as-needed and as indicated by the resident's condition. Psychoactive drug means a drug that is used to alter mood or behavior, including antipsychotic, antianxiety agents and sedatives, as well as antidepressants or anticonvulsants when used for behavior control.

Food Service and Dietary Provisions

Assisted Living Residences. The facility must have the capacity to provide three meals a day and snacks, but may allow residents to purchase fewer meals. The facility must also meet the following RCH licensing requirements.

Residential Care Homes. Three nutritionally balanced, attractive, and satisfying meals per day are required and they must provide 100 percent of the Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and comply with the Dietary Guidelines for Americans. Residents must be provided with alternatives to the planned meal upon request and offered snacks between meals and at bedtime. No more than 14 hours may elapse between the end of an evening meal and the morning meal. Written physicians' orders are needed for therapeutic diets.

Staffing Requirements

The following provisions apply to both ALRs and RCHs.

Type of Staff. The home/residence must employ a *manager*--however named--who works in the facility an average of 32 hours per week and is responsible for its daily management, including supervision of employees and residents.

The manager must not leave the premises without delegating necessary authority to a competent staff person qualified by experience to carry out the manager's responsibilities, including being sufficiently familiar with residents' needs to ensure that their needs are met in a safe environment. Staff left in charge must be fully authorized to take necessary action to meet residents' needs or be able to contact the manager immediately if necessary.

The home/residence must have a *registered nurse* on staff, or a written agreement with an RN or home health agency, to provide required nursing services and to delegate related appropriate nursing care to qualified staff.

A home/residence that provides Medicaid services must designate a staff person responsible for providing the following *case management* services at a minimum: maintenance and implementation of a current assessment and plan of care, and coordination of available community services.

Staff Ratios. No minimum ratios. Homes/residences must have a sufficient number of qualified personnel available at all times to provide necessary care; to maintain a safe and healthy environment; and to ensure prompt, appropriate action in cases of injury, illness, fire or other emergencies. At least one staff member must be on-

duty, in charge, and awake at all times.⁷ The licensing agency may require a home/residence to have specified staffing levels in order to meet the needs of residents.

Training Requirements

Assisted Living Residences. The facility must provide training in the philosophy and principles of assisted living to all staff. Direct care staff must have training in communications skills specific to persons with Alzheimer's disease and other types of dementia. ALRs must also comply with the following training requirements for RCHs.

Residential Care Homes. At least 12 hours of training each year is required for each staff person providing direct care to residents. The training must include, but is not limited to, the following topics:

- General supervision and care of residents.
- Fire safety and emergency evacuation.
- Resident emergency response procedures, such as first-aid, the Heimlich maneuver, responding to accidents, and contacting the police or an ambulance service.
- Policies and procedures regarding mandatory reporting requirements for abuse, neglect, and exploitation.
- Residents' rights and respectful and effective interaction with residents.
- Infection control measures, including but not limited to, hand-washing, handling
 of linens, maintaining clean environments, blood-borne pathogens, and universal
 precautions.

Provisions for Apartments and Private Units

Assisted Living Residences. All resident units must be private occupancy unless a resident voluntarily chooses to share the unit. At a minimum, all units must include a private bathroom, private bedroom, living space and kitchenette, adequate storage, lockable door, individual temperature controls, and must be equipped with emergency response systems to alert on-duty staff. Studio/efficiency apartments that offer a private bedroom, living space, and kitchen capacity in one large room and include a private bathroom meet these requirements. Kitchenettes must include food preparation and storage area, cabinets, counter space, refrigerator with freezer, sink

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⁷ If a facility has fewer than 15 residents, staff may be asleep if there are no residents that routinely need services at that time, although this is rare. The majority of residents need 24/7 care.

with hot and cold running water, a stove or microwave that can be removed or disconnected, and electrical outlets.

The licensing agency may grant a variance for residences constructed prior to 2003 that differ from the minimum requirements. For example, preexisting structures that do not meet the requirements for private kitchen space may have a community kitchen that includes a refrigerator, sink, cabinets for storage, stove or microwave oven, and a food preparation area. If such a variance is granted, its terms must be stated on the license and included in the uniform disclosure form. A community resident kitchen may not be used by the ALR staff for the preparation of resident or employee meals, or for the storage of goods.

The ALR must have an accessible common dining space outside residential units that is sufficient to accommodate residents, and there must be at least one public restroom that is convenient to the common areas and meets applicable federal accessibility laws and guidelines.

Residential Care Homes. The home must provide and maintain a safe, functional, sanitary, home-like, and comfortable environment. Since October 1993, all new homes may offer only single-occupancy or double-occupancy rooms. A minimum of one bathing unit, toilet, and sink must be exclusively available for each eight residents on each floor. Licensed beds with private washing facilities are not included in this ratio. The home must have at least one full bathroom that meets the requirements of the Americans with Disabilities Act and the state's building accessibility requirements.

Provisions for Serving Persons with Dementia

No provisions identified other than the general training requirements above.

Background Checks

The following provisions apply to both ALRs and RCHs.

The facility must not employ a person who has had a charge of abuse, neglect, or exploitation substantiated against him or her, or has been convicted of an offense for actions related to bodily injury, theft, or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction whether within or outside of the State of Vermont. This provision applies to the manager of the home as well, regardless of whether or not the manager is the licensee.

The facility must take all reasonable steps to comply with this requirement, including, but not limited to, obtaining and checking personal and work references and contacting the Division of Licensing and Protection to check if prospective employees are on the abuse registry or have a record of convictions.

Inspection and Monitoring

The state conducts surveys for both ALRs and RCHs prior to license issuance and may inspect a home any other time it considers necessary to determine compliance with the regulations. Authorized staff of the licensing agency have access to the home at all times, with or without notice.

A facility that has received approval to operate a SCU will be surveyed to determine if the SCU is providing the services, staffing, training, and physical environment that were outlined in the request for approval.

Public Financing

Two Medicaid programs cover services in both settings: the Assistive Community Care Services (ACCS) program and the Choices for Care 1115 Waiver program.

ACCS is a State Plan program that pays for services for individuals who do not need a nursing home level of care. Services include case management; assistance with the performance of activities of daily living (ADLs); medication assistance, monitoring, and administration; 24-hour on-site assistive therapy; restorative nursing; nursing assessment; health monitoring; and routine nursing tasks.

The Choices for Care program serves people in ALRs and RCHs who meet Medicaid's nursing home level of care criteria. The program provides an enhanced residential care service for persons at the "highest" classification of need as an entitlement, and to as many persons at the "high" need classification as state funds permit. Services include personal care, housekeeping, activities, nursing oversight, and medication management.

Room and Board Policy

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The state pays an optional state supplement (OSS) to SSI recipients and limits room and board charges for Medicaid-eligible residents of ALRs, residential care facilities, and adult family care homes to the combined SSI and OSS payments minus a PNA retained by the resident. In 2014, the federal SSI payment was \$721, the maximum OSS payment was \$223.94, and the maximum PNA was \$115, providing a maximum room and board payment of \$829.94. However, providers may choose to charge less for room and board so the resident may retain a greater personal needs spending allowance.

⁸ Assistive therapy means activities, techniques, and methods designed to maintain or improve ADLs, cognitive status, or behavior.

Medicaid-eligible residents who are not eligible for SSI and are living in a private room may be charged up to 85 percent of their Medicaid-adjusted income⁹ for room and board. Family supplementation was not allowed in 2014.

Location of Licensing, Certification, or Other Requirements

Division of Licensing and Protection, Department of Disabilities, Aging and Independent Living website: *Care Facility Regulations* with links to the Assisted Living Residence and Residential Care Home licensing regulations in PDF format. http://www.dlp.vermont.gov/regs

Division of Disability and Aging Services, Department of Disabilities, Aging and Independent Living website: *Choices for Care (1115 Medicaid Long Term Care Waiver)*. http://ddas.vermont.gov/ddas-programs/programs-cfc/programs-cfc-default-page#services

Division of Disability and Aging Services, Department of Disabilities, Aging and Independent Living website: *Enhanced Residential Care*.

http://ddas.vermont.gov/ddas-programs/programs-cfc/programs-cfc-addl-webpages/programs-cfc-erc-default-page

Division of Disability and Aging Services, Department of Disabilities, Aging and Independent Living website: *Adult Family Care Homes* with link to Adult Family Care Services "At a Glance" in PDF format. [August 2013]

http://ddas.vermont.gov/ddas-programs/programs-cfc/programs-cfc-addl-webpages/adult-family-care-homes

Information Sources

Megan Tierney-Ward Director Adult Services Division Department of Disabilities, Aging and Independent Living

Suzanne Leavitt, RN, MS
Assistant Director
Division of Licensing and Protection
State Survey Agency Director
Department of Disabilities, Aging and Independent Living

⁹ After Medicaid standard deductions and medical deductions.

COMPENDIUM OF RESIDENTIAL CARE AND ASSISTED LIVING REGULATIONS AND POLICY: 2015 EDITION

Files Available for This Report

FULL REPORT

Arizona

Executive Summary http://aspe.hhs.gov/execsum/compendium-residential-care-and-

assisted-living-regulations-and-policy-2015-edition-executive-

summary

HTML http://aspe.hhs.gov/basic-report/compendium-residential-care-and-

assisted-living-regulations-and-policy-2015-edition

PDF http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-

assisted-living-regulations-and-policy-2015-edition

SEPARATE STATE PROFILES

[NOTE: These profiles are available in the full HTML and PDF versions, as well as each state available as a separate PDF listed below.]

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Alaska http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-

> assisted-living-regulations-and-policy-2015-edition-alaska-profile http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-

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Missouri http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-

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Nebraska http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-

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New Hampshire http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-

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New Mexico http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-

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