

SUMMARY OF ASSISTED LIVING REGULATIONS¹

This summary includes the following subjects²:

- Definition of Assisted Living
- Types Of Assisted Living Residences
- Admission and Retention
- Admission Procedures
- Residency Agreements
- Individualized Service Plans (ISP)
- Resident Services
- Staffing and Training
- Resident Rights
- Disclosure of Information
- Inspection and Enforcement

ASSISTED LIVING

Assisted Living, Assisted Living Residence or ALR 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. A licensed adult care facility that is not utilizing the term assisted living (or any derivation thereof) is not required to obtain licensure as assisted living. However, if it does not, it may not use the term assisted living or provide aging in place.

¹ Please go to:

http://www.health.state.ny.us/facilities/assisted_living/adopted_regulations/docs/assisted_living_residences_laws_and_regulations.pdf to see the regulations in their entirety.

² This summary does not include any information on: management contracts, disaster and emergency, Planning structural and environmental standards, records and reports, certificates of incorporation; articles of organization, operating certificates and additional certifications; authority limited to operator or fees. Please go to the regulations themselves to review these requirements.

TYPES OF ASSISTED LIVING RESIDENCES

Residences which meet the definition of assisted living as described above and want to be licensed as an assisted living residence (ALR) must first be licensed as an adult home or enriched housing and comply with those regulations in addition to those for ALRs. A licensed ALR that elects to provide *aging in place* (retain residents who become more dependent) must apply for and receive an enhanced assisted living certificate. 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 apply for and receive certification as a special needs assisted living residence. ALRs may apply for enhanced and/or special needs assisted living certification for either all or a portion of their licensed beds.

ADMISSION AND RETENTION

ALR without Enhanced or Special Needs Certificates

The ALR without enhanced or special needs certificates may **not** admit anyone who:

- is in need of continual medical or nursing care or supervision;
- suffers from a serious and persistent mental disability sufficient to warrant placement in a mental hygiene residential facility;
- requires health or mental health services which are not available or cannot be provided safely and effectively by local service agencies or providers;
- causes, or is likely to cause, danger to himself or others;
- repeatedly behaves in a manner which directly impairs the well-being, care or safety of the resident or other residents, or which substantially interferes with the orderly operation of the facility;
- has a medical condition which is unstable and which requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purposes of reporting to the resident's physician;
- refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen when such failure causes, or is likely to cause, in the judgment of a physician, life-threatening danger to the resident or others;
- is chronically bedfast;
- is chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer;

- chronically requires the physical assistance of another person in order to walk;
- chronically requires the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;
- has chronic unmanaged urinary or bowel incontinence;
- suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;
- is dependent on medical equipment, unless it has been demonstrated that:
 - the equipment presents no safety hazard;
 - use of the equipment does not restrict the individual to his room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;
 - use of the equipment does not restrict or impede the activities of other residents;
 - the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;
 - such assistance, if needed, is available from approved community resources; and
 - each required medical evaluation attests to the individual's ability to use and maintain the equipment;
- engages in alcohol or drug use which results in aggressive or destructive behavior; or
- is under 18 years of age; or, in a public adult home, under 16 years of age.

Assisted Living Residences with an Enhanced Certificate

Anyone who wants to age in place may only do so in an ALR with an enhanced assisted living certificate. An ALR with an enhanced assisted living certificate may admit individuals who:

- are chronically chairfast and unable to transfer, or chronically require the physical assistance of one or more person(s) to transfer;
- chronically require the physical assistance of one or more person(s) to walk;
- chronically require the physical assistance of one or more person(s) to climb or descend stairs;
- are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or
- have chronic unmanaged urinary or bowel incontinence.

They do not have to admit individuals who have all these needs.

The ALR with an enhanced assisted living certificate may **not** admit anyone in need of 24 hour skilled nursing or medical care. However an ALR with an enhanced certificate may retain residents in need of such care if each of the following conditions is met:

- the resident's physician and home care services agency, if applicable, and hospice medical director, if applicable, determine and document that, with the provision of additional nursing, medical and/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;
- the resident hires appropriate nursing, medical or hospice staff to care for his or her increased needs;
- the operator agrees to retain the resident and to coordinate the care provided by the enhanced assisted living residence and other provider staff; and
- the resident is otherwise eligible to reside in the facility.

ADMISSION PROCEDURES

In order to determine if the prospective resident is appropriate for admission, he/she must be evaluated within 30 days prior to admission using the [Personal Data and Resident Evaluation Form](#), to determine whether or not the individual is appropriate for admission.

Every prospective resident must have a [Medical Evaluation](#) conducted within 30 days prior to admission. This evaluation must be repeated whenever a change in the resident's condition warrants, but no less than once in every 12 months. Such medical evaluation must be a written and signed report from a physician.

RESIDENCY AGREEMENTS

- Every operator shall execute with each resident a written residency agreement, in no less than twelve point type and written in plain language.
- The agreement and all supporting documents and attachments and
- any changes (whenever changes are made to the agreement) will be given to the resident, resident's representative and resident's legal representative, if any.
- Such agreement shall:

- 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;
 - contain the entire agreement of the parties and shall include the disclosures listed below.
- The residency agreement shall include, at a minimum:
 - the name, telephone number, street address and mailing address of the residence;
 - 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;
 - the name and address of the assisted living operator and at least one natural person (in NY State) authorized to accept personal service on behalf of the operator;
 - 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;
 - the effective period of the agreement;
 - a description of the type and amount of services and any limitation thereto, to be provided to the resident and the base rate to be paid by the resident for those services;
 - 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;
 - 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;
 - 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;
 - a description of the complaint resolution process available to residents;
 - the name of the resident's representative and resident's legal representative, if any, and a description of the representative's responsibilities;

- 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;
- procedures and standards for termination of contract, discharge and transfer to another dwelling or facility;
- billing and payment procedures and requirements;
- procedures in place in the event the resident, resident's representative or resident's legal representative is no longer able to pay for services provided for in the resident agreement or for additional services or care needed by the resident;
- 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, and
- clear notice to the consumer that the operator cannot mandate that a resident or other person agree to a guarantor of payment as a condition of admission unless the operator has reasonably determined, on a case by case basis, that the prospective resident would lack either the current capacity to manage financial affairs and/or the financial means to assure payment due under the residency agreement.

INDIVIDUALIZED SERVICE PLAN (ISP) FOR ALL ASSISTED LIVING RESIDENCES

A written ISP will be developed upon admission to any assisted living residence. The plan will:

- 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 or equivalent staff;
- be developed in consultation with the resident's physician;
- be developed in accordance with the medical, nutritional, rehabilitation, functional, cognitive and other needs of the resident; and
- be implemented within 30 days of admission of the resident.
- The plan shall include the services to be provided, and how and by whom services will be provided and accessed; and
- be reviewed and revised every six months and whenever ordered by the resident's physician or as frequently as necessary to reflect the changing care needs of the residents. To the extent necessary,

such review and revision shall be undertaken in consultation with the resident's physician.

REQUIREMENTS FOR RESIDENT SERVICES IN ALL ASSISTED LIVING RESIDENCES³

Services

- Services shall include, at a minimum, housing, twenty-four hour on-site monitoring, daily food service, case management services, development of an individualized service plan, personal care and/or home care services.
- Services provided shall be delineated in the signed residency agreement and shall be consistent with the resident's Individualized Service Plan (ISP).
- Additional services, supplies or amenities may be available from the operator directly or through arrangements with the operator and may be subject to additional charges, provided the provision of such services, supplies or amenities and charges for such are specified in the residency agreement.
- Residents shall have the ability to receive services from service providers with whom the operator does not have an arrangement. The operator shall assist the resident in arranging such services, if necessary, and, as part of the operator's case management responsibility, shall be responsible for coordinating the care the operator provides or arranges with the care provided by such other service providers.

Monitoring

- The operator shall designate sufficient staff who shall be responsible for monitoring residents on-site.
- Monitoring shall be provided at any hour of the day or night of the week, and shall include but not be limited to the ability:
 - to respond to urgent or emergency needs or requests for assistance with appropriate staff; and
 - to identify abrupt or progressive changes in behavior, appearance, or in performing basic activities of daily living which may signify the need for re-assessment and changes in service as reflected on the ISP.

³ Note that all of the rules are in addition to those required for adult homes or enriched housing. See <http://www.health.state.ny.us/nysdoh/phforum/nyccr18.htm> for regulations for adult homes and <http://www.health.state.ny.us/nysdoh/phforum/nyccr18.htm> for regulations for enriched housing.

Daily Food Service

- Food services shall be provided in a manner that respects the dietary needs of the residents in relation to health conditions, food allergies and dietary intolerances, religious and ethnic mandates, and that allows for a reasonable variation in taste preferences.

Case Management Services

- The provider must identify and evaluate the resident's needs, interests, and strengths and the capability of the facility to meet those needs, prior to admission and then at least once every 12 months, using the [Personal Data and Resident Evaluation](#) form prescribed by the NYS Department of Health;
- oversee and coordinate a written ISP for each resident;
- provide information upon admission including meeting with prospective residents and their representatives and legal representatives, if any, to discuss whether and how the residence can meet the needs of the prospective resident, and to explain the various levels of care and services available in a basic assisted living residence, an enhanced assisted living residence and a special needs assisted living residence;
- meet with prospective residents and residents, and their representatives and legal representatives to discuss matters described in the residency agreement and disclosures required, including the services that the residence can provide to meet the needs of the prospective resident or residents;
- provide information and referral on an ongoing basis;
- coordinate with service providers selected by the residents and with other available resources on an ongoing basis to best address the resident's identified needs and interests;
- develop a formal mechanism between the case manager and facility staff who serve the resident to identify abrupt or progressive changes in behavior or appearance, which may signify the need for assessment and service; and maintain a complete and accurate personal record for each resident.

Personal Care

- Each resident shall be provided such personal care as is necessary to enable the resident to maintain good personal hygiene, to carry out the activities of daily living, to maintain good health, and to participate in the ongoing activities of the residence, as per the resident's ISP.

Health Care Services

- The resident's ISP shall specify any necessary health care services to be provided to the resident, including those provided by a home care services agency.
- Unless approved by the commissioner to provide enhanced or special needs assisted living (thus has certificates) the residence shall arrange for any needed health care services to be provided by a home care services agency. Such services shall include: nursing, home health aide services, physical therapy, occupational therapy, speech therapy, respiratory therapy, social work, nutrition, and medical supplies, equipment and appliances.
- A home care services agency shall not provide those basic services required to be provided by an adult home or enriched housing program including personal care services, unless the assisted living residence has contracted with the home care services agency for the provision of such required services on its behalf, and such services are included in the resident's basic rate. If such home care services agency fails to provide services in compliance with the requirements for the residence as an adult home or enriched housing program, the assisted living residence operator shall continue to be responsible for assuring that such services are provided in accordance with applicable regulations.
- The receipt of hospice services by a resident of an assisted living residence shall be permitted, and additional certification for enhanced assisted living shall not be required for the resident to receive hospice services within the residence, so long as the following conditions are met:
 - the ALR, the resident's physician and the hospice provider determine that, with the provision of hospice services, the resident can be safely cared for in the assisted living residence;
 - service responsibilities of the residence and the hospice are specified on the ISP; and
 - the operator agrees to retain the resident and to coordinate the care provided by the operator with the hospice.

Medication Management

- A medication assistance record shall be maintained for each resident to include, at a minimum, the diagnoses of the resident, all medications used by the resident, including both prescribed and over-the-counter medications, the indication for the medications prescribed, labels for medications that are dispensed as generic

drugs labeled as such, any special directions for taking or storing medications, known allergies, and a picture of the resident or other electronic means to identify the resident.

- Medication orders received from the physician of a resident prescribed as PRN (“Prescribe as Needed”) shall be reviewed with the physician in terms of the resident’s ability to identify the need for medication.
- The physician’s order for all PRN medications, including prescriptions and over-the counter, shall identify those resident behaviors or symptoms warranting consideration of need for the medication(s).
- Unless at the time that a medication order is issued, the resident’s physician has indicated that the resident is able to identify the need for the medication, a resident may not be assisted with any PRN medication, whether prescription or over-the-counter, without observation by or consultation with appropriate licensed nursing or medical providers. The record of assistance with such medications shall include the behavior or symptoms observed as well as the nature of such observation by or consultation with such licensed staff.
- The use of prescription PRN medications for persons with dementia shall be limited to only those instances where the physician has determined after review with residence staff that there is no alternative to the order.

SPECIAL SERVICE REQUIREMENTS FOR RESIDENCES WITH ENHANCED ASSISTED LIVING CERTIFICATES

- In addition to the services of the assisted living residence provided pursuant to an executed residency agreement, a resident of enhanced assisted living within a residence granted an enhanced assisted living certificate may receive health care services provided by staff directly employed by the enhanced assisted living residence.
- If an enhanced assisted living residence provides health care services that would ordinarily be provided by a home care services agency then the operator of the enhanced assisted living residence shall develop appropriate policies and procedures related to such health care services, to include but not be limited to:
 - service specific delivery standards consistent with current professional standards of practice, including staff supervision, which are reviewed and revised as necessary;
 - documentation of service delivery;

- storage, cleaning and disinfection of medical supplies, equipment and appliances;
 - provision of nursing or therapeutic service, procedure or treatment not previously provided by the enhanced assisted living residence;
 - resident discharge which assures a timely, safe and appropriate transition; and
 - appropriate quality assurance and improvement activities.
- Personal care tasks that exceed the approved scope of tasks in which the resident aide is trained, shall be performed by home health aides.
 - An enhanced assisted living residence shall provide or arrange for nursing services for its residents as necessary. Such services shall include but not be limited to:
 - assessment and evaluations of residents;
 - supervision of aides; and
 - nursing care and treatments.

Application for Enhanced Assisted Living Certificate

An application for Enhanced Assisted Living Certification shall include a plan which sets forth how the additional needs of residents will be safely and appropriately met at the enhanced assisted living residence. Such plan shall include, but need not be limited to:

- a written description of services;
- staffing levels;
- staff education and training;
- work experience of individuals (operator's staff or contractors) who will provide services to residents; and
- any environmental modifications that will be made to protect the health, safety and welfare of the residents.

SPECIAL SERVICE REQUIREMENTS FOR RESIDENCES WITH SPECIAL NEEDS ASSISTED LIVING CERTIFICATES

- Certified special needs assisted living beds must be located in a fixed area within a building.
- The operator shall provide a comprehensive and coordinated program to regularly observe and assess the need for services in a professional, respectful, competent, and timely manner.
- Services provided to a resident of special needs assisted living shall be provided by individuals appropriately trained, experienced and licensed or certified.

- The operator shall ensure initial and on-going efforts to establish community-based individual and agency linkages and contacts, specific to serving a special needs population.

SUPERVISION

- The operator shall maintain knowledge of the general whereabouts of each resident.
- In the event a resident is absent from the residence and the resident's whereabouts are unknown, immediate efforts shall be undertaken to locate the resident, including immediate notification to the appropriate law enforcement agency and the Department of Health's regional office. Notification shall also be made immediately to the resident's family and representative, unless a different time frame has been agreed upon pursuant to the residency agreement.

MEDICATION ASSISTANCE

- When disruptive or aggressive behaviors are exhibited, the operator shall evaluate the special needs assisted living resident, determine precipitating factors, make staff aware of precipitating factors that need to be avoided, and develop a plan to include successful interventions and to promote the highest level of resident function.

CASE MANAGEMENT

- The operator shall assist the special needs assisted living resident to maintain family ties by assisting residents' family members and representatives to:
 - adjust to and remain involved with the resident's initial placement and continued residence in the special needs assisted living residence;
 - establish, operate, and maintain individual and collective methods or recommendations for change or improvement in residence operations and programs, regarding both individual and congregate resident-related issues;
 - remain active in the care planning process for the resident; and remain informed in a timely manner about significant issues regarding the resident's care and supervision needs and changes made to the care plan.
- ISPs and case management records shall identify when a

resident is periodically resistant to the provision of personal care services by staff of the special needs assisted living residence and include a plan for addressing such services.

ACTIVITIES

- The operator shall provide frequent individual and group activities which are geared towards individuals with special needs and which are meaningful to the residents. This programming shall be based on initial and on-going, historical and current, resident interests, assessments, and observations of residents.
- There shall be sufficient staff to ensure that activities programs are available throughout every day and evening.
- Weather permitting, residents of special needs assisted living residences shall have the opportunity and be encouraged to be outdoors, each day, with appropriate and sufficient supervision.

FOOD SERVICE

- Food should be offered outside of the usual meal times in a manner acceptable to the special needs assisted living resident and mindful of the resident's functional abilities, preferences and needs. The resident's care plan should reflect these needs and preferences.
- To ensure optimal intake at mealtimes, unless contrary to the physician's orders, prescribed nutritional supplements shall be provided between and not at the same time as scheduled meals.

Application for Special Needs Certificate

An application for Special Needs Assisted Living Certification shall include a special needs plan 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 of individuals (operator's staff or contractors) providing services to residents;
- professional affiliations or special characteristics relevant to serving persons with special needs; and
- any environmental modifications that have been or will be made to protect the health, safety and welfare of such persons in the residence.

STAFFING AND TRAINING FOR ALL ASSISTED LIVING RESIDENCES

- The operator shall designate an individual to be responsible for operating the residence in compliance with applicable law and regulations and through direct performance or coordination.
- The operator shall ensure sufficient staff in number and qualifications to conduct the functions specified for an adult home or enriched housing program.
- The operator shall provide staff sufficient in number and qualified by training and experience to render, at a minimum, those services mandated by law or regulation.

Case Management

- In an assisted living residence where the approved capacity is less than 25 beds, a qualified case manager shall be on site for at least 20 hours per week and available to provide case management services.
- In a residence with 25 or more beds, a qualified case manager shall be on site on a basis of one hour per week for each additional bed up to a maximum of 40 hours per week and available to provide case management services as follows:

Resident Census Case Manager Hours Required

1-24 beds - 20 hours/week

25-44 beds - 20 hours/week +1 hour/week/each bed over 24 up to 40 hours

- In a residence of 45 or more beds one or more case managers must be onsite at least 40 hours and available to assure that case management services adequately meet the needs of the residents.

Personal Care

- The operator shall assign sufficient staff, hereafter referred to as resident aides, to perform personal care functions on a 24-hour basis.
- Resident aides shall receive 40 hours of initial training as specified in the Department's training requirements and curriculum or an approved equivalent program.
- Resident aides shall receive 12 hours of ongoing, inservice education annually in topics applicable to their responsibilities.

- Records documenting training and education shall be maintained in the personnel record of each resident aide.
- An annual assessment of the performance and effectiveness of all resident aides must be conducted including at least one direct observation of performance.
- All personnel must receive orientation to the policies and procedures related to the provision of assisted living residence, enhanced assisted living residence and/or special needs assisted living residence services as applicable, to include, but not be limited to general duties of staff, applicable facility and service delivery procedures, responsibility for responding to resident emergencies, emergency evacuation and disaster plan, and personal appearance of the employee.
- There must be a current written job description for each position which delineates responsibilities and specific education and experience requirements.

STAFFING AND TRAINING FOR ALL RESIDENCES WITH ENHANCED OR SPECIAL NEEDS ASSISTED LIVING CERTIFICATES

- Sufficient nursing staff to meet the health care needs of the residents must be available.
- Nursing coverage requirements, at a minimum, include:
 - a registered professional nurse on duty and on-site at the residence, for eight hours per day, five days a week, and a licensed practical nurse shall be on duty and onsite at the residence for eight hours per day for the remainder of such week;
 - a registered professional nurse on call and available for consultation 24 hours a day, seven days a week, if not available onsite; and
 - additional nursing coverage, as determined necessary and documented by the resident's medical evaluation or otherwise by the resident's attending physician and/or the ISP.
 - An applicant for, or operator of, an enhanced assisted living residence or special needs assisted living residence with 40 or fewer operational beds may submit to the Department a written request for a waiver of the minimum requirements for nursing coverage. Such waiver request must contain the following:
 - documentation acceptable to the Department that either

- the applicant or operator is unable to meet such minimum requirements; or
 - the current needs of the residents can be appropriately and safely met with coverage that is less than or otherwise different from the minimum requirements; and
 - a description acceptable to the Department of what will be done by the operator to protect the health, safety and well-being of the residents, and specifically how the nursing needs of the residents will be addressed, in accordance with the medical evaluations and ISPs of the residents; and
 - documentation acceptable to the Department that the operator will include in its disclosure statements provided to prospective residents, residents and their representatives the details of any such waiver of the minimum nursing coverage requirements, as approved by the Department; and
- the Department will review each such waiver request submitted on a case by case basis, and may approve a waiver request to the extent and for the duration it deems appropriate, in accordance with the provisions of this section. No waiver request may be implemented by the operator until it receives written approval from the Department. Before granting a waiver request the Department may require additional information and may require that the operator adopt special methods or procedures to protect resident health and safety. The Department may grant written approval to such waiver request only after making a determination that the proposed waiver will not adversely affect the health, safety and well-being of residents.
- A licensed nurse assuming nursing coverage responsibilities in an enhanced assisted living residence or special needs assisted living residence may also provide:
 - case management services as specified in subdivision (c) of this section, or
 - serve as administrator, so long as the nursing care needs and case management needs of the residents, and the administration needs of the residence, are adequately met.
 - At any time in which a registered professional nurse is not on duty and on-site at an enhanced assisted living residence or a special needs assisted living residence, the operator shall

provide at a minimum directly or through contract, sufficient home health aide staff to meet the care needs of the residents.

- Home health aides shall receive training in first aid and medication assistance as specified by the Department, and shall be thoroughly oriented to procedures to be followed in emergency situations, as approved by the Department.
- An enhanced assisted living residence or a special needs assisted living residence may employ or contract for appropriately trained personnel with professional licenses and registrations, as applicable, to provide health care services directly.
- Home health aides in an enhanced assisted living residence or a special needs assisted living residence must be trained as and receive 12 hours of in-service education annually in topics relevant to their responsibilities.

RESIDENT RIGHTS

Each operator of an assisted living residence must adopt and post conspicuously in a public place in the residence a statement of the rights and responsibilities of residents and shall treat each resident in accordance with the provisions of such statement. In addition, 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, to the resident's representative and resident's legal representative, if any, and to each member of the residence's staff and any current resident.

Resident's rights and responsibilities shall include but not be limited to those below.

- 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;
- Civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed;
- Residents shall have the right to:
 - have private communications and consultations with his or her physician, attorney, and any other person; and resident's representative and resident's legal representative, if any, shall have the right to present grievances on behalf of the resident

or others, to the residence's staff, administrator or 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;

- choose their health care providers, notwithstanding any other agreement to the contrary;
- manage his or her own financial affairs;
- have privacy in treatment and in caring for personal needs;
- have confidentiality in the treatment of personal, social, financial and medical records, and security in storing personal possessions;
- 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;
- receive or send personal mail or any other correspondence without interception or interference by the operator or any person affiliated therewith;
- not to be coerced or required to perform the work of staff members or contractual work;
- have security for any personal possessions stored by operator;
- receive adequate and appropriate assistance with activities of daily living, 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;
- to have 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;
- receive visits from family members and other adults of the resident's choosing without interference from the assisted living residence; and
- written notice of any fee increase not less than forty-five days prior to the proposed effective date of the fee increase. However, providing additional services to a resident shall not be considered a fee increase in the following situations:
 - if a resident, resident representative or legal representative agrees in writing to a specific rate or fee increase, through an amendment of the

residency agreement, due to the resident's need for additional care, services or supplies, the operator may increase such rate upon less than forty-five days written notice;

- if the operator provides additional care, services or supplies upon the written order of the resident's primary physician, the operator may, through an amendment to the residency agreement, increase such rate upon less than forty-five days written notice; or
- in the event of an emergency which affects the resident, the operator may assess additional charges for the benefit of the resident as are reasonable and necessary for services, materials, equipment and food supplies during such emergency.

Visitors have the responsibility to obey all reasonable regulations of the residence and to respect the personal rights and private property of the other residents.

Resident Organizations

The operator shall encourage and assist residents to organize and maintain committees, councils, or such other self-governing body as the residents may choose. The operator shall assure that the residents' organization:

- meets as often as the membership deems necessary;
- is chaired and directed by the residents; and
- may meet with any member of the supervisory staff, provided that reasonable notice of the request is given to such staff.

The operator shall:

- appoint a staff person to act as an advisor to the residents' organization, who shall serve as a liaison between the organization and administration to report all problems, issues and suggestions discussed by the residents which require administrative action; and
- assure that any complaints, problems or issues reported by the residents' organization to the designated staff person or administration are addressed and that a written report addressing the problems, issues or suggestions is sent to the organization.

Family Organizations

The operator shall encourage and assist residents' families and representatives who so desire to organize and maintain committees, councils, or such other self-governing body as the residents' families and representatives may choose. The operator shall assist the residents' family and representative organization:

- in meeting as often as the membership deems necessary;
- in assuring the organization is chaired and directed by the residents' families and/or representatives; and
- in meeting with any member of the supervisory staff, provided that reasonable notice of the request is given to such staff;

The operator shall:

- appoint a staff person to act as an advisor to the residents' family and representative organization, who shall serve as a liaison between the organization and administration to report all problems, issues and suggestions discussed by the families and representatives which require administrative action; and
- assure that any complaints, problems or issues reported by the residents' family and representative organization, if formed, to the designated staff person or administration are addressed, and that a written report addressing the problems, issues or suggestions is sent to the organization.
- assure that the residents' family and representative organization, if formed, have the freedom to meet without interference and be provided space to conduct such meetings.

Grievances and Recommendations.

The operator shall develop written procedures and shall establish and maintain a system to receive and respond, within 21 days of receipt, to grievances and recommendations for change or improvement in residence operations and programs which are presented by residents and their family and representatives.

DISCLOSURE OF INFORMATION

Disclosure by Consumer Placement Services and Directories

An organization, company or agency which provides assistance and referrals to consumers for assisted living services may be paid by individual residences for referrals to their facilities. However, such agencies must

have a signed agreement with the assisted living providers they are working with and disclose to consumers that they are being compensated by the facility to make referrals.

In conjunction with any marketing materials, the Consumer Information Guide developed by the NY State Department of Health and the residency agreement the assisted living operator shall disclose on a separate information sheet in plain language and in twelve point type the following to 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 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:

- a statement:
 - listing and describing the residence's licensure and stating whether 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;
 - stating the maximum number of enhanced assisted living beds and/or special needs assisted living beds the operator is currently approved to provide; and
 - stating that the operator will post prominently in the residence, on at least a monthly basis, the then-current number of vacancies under its enhanced assisted living and/or special needs assisted living programs.
- 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;
- 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;
- a statement regarding the ability of residents to receive services from service providers with whom the operator does not have an arrangement;
- a statement that residents shall have the right to choose their health care providers, notwithstanding any other agreement to the contrary;
- 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 Medicare;

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

INSPECTION AND ENFORCEMENT

Inspection of Unlicensed Facilities

- For the purposes of assessing whether an unlicensed facility is an assisted living residence subject to the licensure and inspection of the Department, the Department may inspect any facility which reasonably appears to the Department to be an assisted living residence. The needs of the residents, the care and services provided, the physical plant and the administration of the facility may be assessed in accordance with applicable statute and regulation.
- No civil penalty shall be assessed, and no operating certificate shall be revoked, suspended or limited, without opportunity for a hearing provided, however, that an operating certificate may be temporarily suspended or limited without a hearing for a period not in excess of 60 days upon written notice to the facility that the Department has found that the public health, or an individual's health, safety or welfare is in imminent danger. If the Department schedules a hearing to begin during the suspension period, in a proceeding to suspend, revoke or limit the operating certificate, the temporary suspension will remain in effect until the hearing decision is issued.

Civil penalties for Licensed Assisted Living Residences

- Civil penalties of up to \$1,000 per day may be assessed against assisted living residences, except those operated by a social services district, for violation of these regulations.

Civil penalties for UnLicensed Assisted Living Residences

- Civil penalties of up to \$1,000 per day may be assessed against any facility:
 - which is operating as an assisted living residence and which does not possess a valid operating certificate issued by the Department;

- which permits aging in place and thus should possess an enhanced assisted living certificate but which does not possess such certificate; or
- which, whether or not it is serving such residents, advertises or markets itself as serving individuals with special needs, but which does not possess a special needs assisted living certificate.