

# LONG TERM CARE COMMUNITY COALITION

*Advancing Quality, Dignity & Justice*

## **Assisted Living: Promising Policies and Practices for Improving Resident Health, Quality of Life, and Safety**



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## Why Do Assisted Living Residents Need Strong(er) Protections?

Assisted living facilities (ALFs) are increasingly viewed by seniors and their families as a desirable option for residential care, including for those in need of a nursing home level of care but who wish to avoid the institutional environment that typically defines life in a nursing home. According to the U.S. Government Accountability Office (GAO), more than ten billion dollars in federal and state Medicaid funding was spent on assisted living for 330,000 residents in 2014 alone.<sup>1</sup>

Despite the billions of dollars in public funding every year, there are no federal rules governing the standards of care in ALFs. This lack of federal oversight not only means that care in ALFs is completely regulated by individual states, but also that, even when their needs and vulnerability are similar, ALF residents do not have a comparable right to quality care and quality of life that nursing home residents are entitled to under federal law.<sup>2</sup>

*Despite the billions of dollars in public funding every year, there are no federal rules governing standards of care in ALFs. This lack of federal oversight not only means that care in ALFs is completely regulated by individual states, but also that ALF residents do not have a comparable right to quality care and quality of life that nursing home residents are entitled to by federal law.*

In the absence of federal standards, ALF residents are only protected to the extent that individual states have developed regulatory requirements to ensure the safety and dignity of their residents. Unfortunately, according to a 2018 GAO report, *Medicaid Assisted Living Services: Improved Federal Oversight of Beneficiary Health and Welfare is Needed*, all too often states fail to protect ALF residents or even keep track of when they are harmed. The GAO found that there were an astonishing 23,000 reported cases of “critical incidents,” including abuse, neglect, exploitation, and death, in ALFs across just 22 states in 2014.<sup>3</sup> While this number is significant, there is little doubt that the extent to which critical incidents and other problems occur is, actually, far greater, since only 22 of the 48 states surveyed by the GAO tracked and reported critical incidents. Moreover, the review only included Medicaid assisted living, which covers a small minority of ALF residents (most Americans pay privately for assisted living services).

The Long Term Care Community Coalition (LTCCC) believes that the GAO’s report provides clear evidence of the urgent need to address the health and safety of assisted living residents. In the absence of strong and clearly defined quality of care and quality of life standards at every level (community, state, and national), residents will continue to be susceptible to inappropriate care, treatment, and living conditions when they move to an ALF.

<sup>1</sup> *Medicaid Assisted Living Services: Improved Federal oversight of Beneficiary Health and Welfare is Needed*, Government Accountability Office (Jan. 2018), <https://www.gao.gov/assets/690/689302.pdf>. Hereinafter *GAO Assisted Living Report*.

<sup>2</sup> The federal Nursing Home Reform Law states that each resident is entitled to services that help the resident “attain or maintain” his or her “highest practicable physical, mental, and psychosocial well-being.” 42 U.S.C. § 1395-i-3(b)(2).

<sup>3</sup> *GAO Assisted Living Report*.

## How To Use This Report

The goal of this report is to provide consumers, providers, and policymakers with information and insights into best practices and policies for assisted living. The report focuses on areas of public interest and concern which we have identified as particularly important to ensuring resident safety and the ability of residents to realize assisted living's "promise" of a resident-centered and directed, home-like environment.<sup>4</sup>

For ease of use and reference, the report is divided into sections by topic. Each topic includes the following sections: (1) An **introduction** (briefly discussing why the policy or practice is important for residents in assisted living); (2) Key **best practices & recommendations** identified in our research; (3) Examples of state policies that we have identified as promising; (4) Sample **regulatory or policy language**.

### Notes On State Policies Highlighted In This Report:

1. Most of the examples of state policies in the report are short summaries of information provided in the Assisted Living Compendium or on a state's website. Visit <https://aspe.hhs.gov/basic-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition#states> for the Compendium's excellent State Regulatory Profiles.
2. In certain cases, where the state standard was particularly robust, we provide actual regulatory language.
3. For each state policy included, we endeavored to include a link in the citation to the best resource we could identify.

## Staffing Requirements: Registered Nurses

### Introduction

Registered nurses (RNs) are a critical component of long-term care. In fact, the federal Nursing Home Reform Law requires that every facility have an RN on duty for a minimum of eight hours a day, seven days a week.<sup>5</sup> There are a number of reasons for this, including the fact that RNs are typically the only care staff in a facility present on a regular basis with the training and licensure to evaluate and assess residents, manage medications, and supervise aides and other direct care staff.

Given the similarities between nursing home and ALF residents in terms of needs and frailty (including high levels of dementia in both settings), it is essential that RNs have a meaningful presence in the lives of ALF residents, too. Though assisted living lobbyists advocate for a "social model," in which regulatory standards should be avoided, a growing body of evidence

<sup>4</sup> The selected state regulations were identified using the Compendium of Residential Care and Assisted Living Regulations and Policy: 2015 Edition. See *Compendium of Residential Care and Assisted Living Regulations and Policy: 2015 Edition*, Office of the Assistant Secretary for Planning and Evaluation, HHS (Jun. 15, 2015), <https://aspe.hhs.gov/basic-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition>. Hereinafter, the *Assisted Living Compendium*.

<sup>5</sup> 42 U.S.C. § 1395i-3(b)(4)(c)(i).

indicates that RNs are needed to ensure adequate monitoring and safety.<sup>6</sup> In fact, even in states with weak RN requirements, many ALFs voluntarily employ RNs to ensure that their residents receive the care and services they need to live safely.

## Key Best Practices & Recommendations

### 1. Meaningful presence & role of RN

- Any facility that is admitting and/or retaining residents who have needs beyond help with “instrumental activities of daily living”<sup>7</sup> should have an RN in the facility on a full-time basis (minimally) with remote availability 24/7. This includes any facility that is operating under a Medicaid Assisted Living or other state plan (since, in order to qualify for Medicaid ALF services one, by definition, must have a nursing home level of need).

### 2. RN role & responsibilities

- Specify the duties of the RN in coordinating assisted living services performed by direct care workers (DCWs).
- The RN’s responsibilities include (but are not limited to):
  - Supervising the delivery of nursing services and assistance with activities of daily living;
  - Ensuring that DCWs have the competencies necessary to meet the needs of residents in the facility;
  - Resident assessments (which should be conducted as often as necessary, based on the client’s condition, and no less frequently than every one hundred and twenty (120) days);
  - Medication management; and
  - Ensuring that the resident and his or her representative (where applicable) is aware of the client’s medication regime and able to make decisions regarding medication administration.
- Specify the title of RN position(s) (e.g., supervisor or director of nursing) so that his or her role in the facility is clear.
- Ensure that there is an alternative plan of action if the RN is not reachable (e.g., the RN does not answer the phone).

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<sup>6</sup> See, for example, *Scope and Standards of Assisted Living Nursing Practice*, available at

[http://www.alnursing.org/wp-content/uploads/2014/07/SCOPE\\_AND\\_STANDARDS\\_FINAL2\\_09-19-06.pdf](http://www.alnursing.org/wp-content/uploads/2014/07/SCOPE_AND_STANDARDS_FINAL2_09-19-06.pdf).

<sup>7</sup> Instrumental activities of daily living include housekeeping, food preparation, laundry and other activities not necessary for fundamental functioning. For further information, see

[https://www.unmc.edu/media/intmed/geriatrics/reynolds/pearlcards/functionaldisability/IADLs\\_form.pdf](https://www.unmc.edu/media/intmed/geriatrics/reynolds/pearlcards/functionaldisability/IADLs_form.pdf).

- Clearly delineate when the RN should provide direct care to residents in lieu of the DCW (such as in the case of an emergency) and how the RN can fulfill responsibilities if not present at the facility.

### 3. Specify RN hours

- Clarify the availability of RNs on-site and on-duty depending on the number of beds in the facility.
- Declare work status (e.g., full-time) depending on the number of beds in the ALF.
- Clarify whether and when an RN needs to be on-site at the facility.
- Ensure that an RN is reachable and available at all times.

### 4. Disclosures

- Facilities should clearly disclose the presence and availability of RNs (and, as applicable, other licensed care) staff in:
  - A prominent location in the facility;
  - All marketing materials (including websites);
  - Residency contracts; and
  - Care plans.
- The circumstances under which residents will incur a charge for RN services should be clearly disclosed, including, for initial residency agreements, the specific costs that the resident can reasonably expect to incur.

## Selected State Policies

**Delaware:** The registered nurse must serve full-time for facilities with 25+ beds, and are required to be present at the facility 20+ hours a week when the facility contains 5-24 beds. If the facility contains 4 or less beds, the RN only needs to be present 8+ hours a week.<sup>8</sup>

### Connecticut:

[Note: Following is excerpted directly from CT's regulatory language. We have included the state's regulatory standards for both nursing supervision and services, which address important issues such as: resident assessment, care planning and medication management.]

#### Supervisor of assisted living services

(1) *The supervisor of assisted living services shall be a registered nurse...*

(2) *The supervisor's responsibilities include, but are not necessarily limited to:*

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<sup>8</sup> Delaware Department of Health and Social Services, Division of Long Term Care Residents Protection. <http://regulations.delaware.gov/register/april2010/final/13%20DE%20Reg%201328%2004-01-10.htm>.

- (A) coordinating and managing all nursing and assisted living aide services rendered to clients by direct service staff under his or her supervision;*
- (B) supervising assigned nursing personnel and assisted living aides in the delivery of nursing services and assistance with the provision of activities of daily living;*
- (C) ensuring the evaluation of the clinical competence of assigned nursing personnel and assisted living aides;*
- (D) participating in or developing all agency objectives, standards of care, policies and procedures concerning nursing services and the provision of assistance with activities of daily living;*
- (E) participating in direct service staff recruitment, selection, orientation and in-service education;*
- (F) participating in program planning, budgeting and evaluating activities related to the clinical services provided by the agency;*
- (G) providing weekly reports to the service coordinator regarding any problems associated with the provision of the core services, or any problems or concerns associated with the managed residential community or the assisted living services agency, summaries of which shall be provided to the governing authority in accordance with the schedule established by the governing authority; and*
- (H) providing monthly reports to the service coordinator regarding statistical data including the number of clients served and services provided, summaries of which shall be provided to the governing authority in accordance with the schedule established by the governing authority.*

*(3) The supervisor of assisted living services may provide direct nursing services to clients in accordance with subsection (h) of this section.*

*(4) Any absence of the supervisor of assisted living services longer than one (1) month shall be reported to the commissioner. A registered nurse with a minimum of two (2) years full time or full time equivalent clinical experience in nursing, at least one (1) year of which shall be in a home health care agency or community health program that included care of the sick at home, shall be designated, in writing, to act during any absence of the supervisor of assisted living services.*

#### Nursing Services provided by an assisted living services agency

*(1) An assisted living services agency shall have written policies governing the delivery of nursing services.*

*(2) Nursing services shall be provided by licensed nurses...*

*(3) A registered nurse shall be responsible for the following which shall be documented in the client's service record:*

- (A) admission of clients for service;*

*(B) development of the client service program and instructions for assisted living aide services;*

*(C) assessments, completed as often as necessary based on the client's condition but not less frequently than every one hundred and twenty (120) days, and prompt action when a change in the client's condition would require a change in the client's service program; involved in the client service program;*

*(E) participation in orientation, teaching, and supervision of assisted living aides;*

*(F) arrangements for training or supervision of the assisted living aide by other professionals, when appropriate;*

*(G) referral to appropriate professionals or agencies, whenever the client's condition necessitates...;*

*(H) planning for clients who shall no longer receive or require the services of the assisted living services agency;*

*(I) implementation or delegation of responsibility for the availability of nursing services on a twenty-four (24) hour basis;*

*(J) nursing services which shall include, but not necessarily be limited to:*

*(i) client teaching; (ii) wellness counselling; (iii) health promotion; (iv) disease prevention; (v) medication administration and delegation of supervision of self-administered medications as specified in subdivision (4) of this subsection; and (vi) provision of care and services to clients whose conditions are chronic and stable....*

*(4) Supervision of medication administration by an assisted living service agency shall be provided in accordance with the following:*

*(A) A licensed nurse may administer medications to clients under the written order of a physician or health care practitioner with applicable statutory authority.*

*(B) A licensed nurse may pre-pour medications for clients who are able to self-administer medications, under the written order of a physician or health care practitioner with applicable statutory authority.*

*(C) With the approval of the client or his or her representative an assisted living aide may supervise a client's self-administration of medications. The aide shall only:*

*(i) remind a client to self administer the medications; (ii) verify that a client has self administered their medications; or (iii) assist the client with the self administration in the form of opening bottles, bubble packs or other forms of packaging if the client is not capable of performing this function.*

*(D) For clients who require only supervision of self-administration, a registered nurse may verbally verify the client's medication regimen with the client's physician or health care practitioner with applicable statutory authority and document the medication regime in the client's service record.*

(E) The registered nurse shall verify written or verbal orders from the physician or health care practitioner with applicable statutory authority as needed, but at least once every one hundred and twenty (120) days.

(F) All medications shall be stored within a client's private residential unit.

(G) A licensed nurse shall ensure that the client or his or her representative is aware of the client's medication regime and able to make decisions regarding medication administration.<sup>9</sup>

### Sample Language for Inclusion in Policy or Regulation

We recommend the Connecticut standards, excerpted above, as providing useful language for both government regulation and a facility's policy.

## Staffing Requirements: Administrators

### Introduction

According to the Assisted Living Compendium, “[a]ll states require residential care settings to employ a manager, director, or an administrator who is responsible for daily operations, including staffing, oversight, and complying with regulatory requirements.”<sup>10</sup> An assisted living administrator coordinates the daily operation of an assisted living facility, including overall management of the quality of care as well as the range and quality of services provided to residents. Despite the importance of the administrator role, our research indicates that state standards vary considerably.

**Note:** Annual training requirements for administrators are included in the section on Staff Training Requirements.

### Key Best Practices & Recommendations

1. **Require licensing status**
  - Specify the licensing status of the administrator, providing that the administrator must be certified by a state-approved program.
2. **Specify the role of the administrator**
  - Describe the responsibilities of the administrator in overseeing facility operations, managing services and staff, and ensuring that the facility meets all regulatory requirements.

*If you want to be a manicurist in Texas, you have to have 300 hours of training — that’s not if you’re going to add pedicure or facials — and yet in 40 hours you can become assisted living administrator. I ask you, does that make sense?*

- PBS Frontline, [Catherine Hawes: Assisted Living is a “Ticking Time Bomb.”](#)

<sup>9</sup> Regulations of Connecticut State Agencies, Sec. 19-13-D105. Assisted living services agency, <https://eregulations.ct.gov/eRegsPortal/Browse/getDocument?guid={FE2D17AD-F8B5-4B87-9EB9-02BB3519E8ED}>.

<sup>10</sup> The Assisted Living Compendium, p. 29.

- Specific tasks under “facility operations” should be clarified (e.g., conducting training programs for staff each month).
  - Specify methods by which an administrator shall enforce adherence to regulations (e.g., perform weekly check-in reports with staff members and facility assessments at least once a year).
- 3. Specify the administrator’s hours**
- Specify that the administrator should be a full-time employee (minimum of 35 hours per week).
  - Require the administrator to be present at the facility on a full-time basis and, in his/her absence, that a designee with the appropriate knowledge, skills, and decision-making capacity is present and available.
- 4. Hire a secondary administrator if necessary**
- Require a secondary administrator to be available when the number of beds exceeds 50.
  - The qualifications for a secondary administrator should be the same or similar to that of the primary administrator to ensure appropriate management and supervision.

### Selected State Policies

**Arkansas:** Facilities must have a full-time (40+ hours a week) and state-certified administrator present at the facility. The administrator is responsible for facility operations. If the administrator must leave the facility for any reason, they must pass on their managing duties to another qualified individual during their leave.<sup>11</sup>

**Delaware:** Facilities must have a director in charge of ensuring that the facility meets all state assisted living regulations. The director must be present at the facility 8+ hours a day. Facilities with 25+ beds must have a full-time nursing home administrator. Facilities with 5-24 beds must have a nursing home administrator working 20+ hours per week on the facility’s site. Facilities with 4 or less beds needs only a full-time manager.<sup>12</sup>

**District of Columbia:** The licensed administrator must manage facility services. When absent and when residents are present at the facility, the administrator must entrust their responsibilities to a qualified staff member who is 18+ years old.<sup>13</sup>

### Sample Language for Inclusion in Policy or Regulation

Each facility shall hire a licensed assisted living administrator who has been certified by a state-approved certification program. The administrator must be a full-time employee, working a minimum of 35 hours a week. When the administrator needs to leave the facility, a secondary

<sup>11</sup> ARK. CODE R. § Assisted Living Facilities Level I, (LexisNexis 2011), <http://humanservices.arkansas.gov/dms/oltcDocuments/alfi.PDF>.

<sup>12</sup> Delaware Department of Health and Social Services, Division of Long Term Care Residents Protection. <http://regulations.delaware.gov/register/april2010/final/13%20DE%20Reg%201328%2004-01-10.htm>.

<sup>13</sup> D.C. CODE § 44-101.01, Chapter 1, <https://dchealth.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/AssistedLivingLaw.PDF>.

licensed administrator with similar qualifications must be available to take over the primary administrator's responsibilities.

The administrator is responsible for overseeing facility operations, managing services and staff, and ensuring that the facility meets all state regulations. Particular responsibilities include, but are not limited to, the following:

- Ensuring regularly scheduled training programs for staff;
- Checking-in weekly with staff to ensure adherence to protocols and regulations;
- Regularly engaging with family and resident councils (if applicable); and
- Responding to complaints and concerns raised by residents, their family and representatives, LTC ombudsmen, or facility staff.

## Staffing Requirements: Staff Ratios

### Introduction

Both the sufficiency and competency of care staff are essential aspects of assisted living. This is due to the fact that assisted living facilities (ALFs) typically support residents who need assistance with basic activities of daily living, such as eating meals, taking medication, and bathing, as well as certain care needs. Most ALF residents have dementia or other conditions which make them particularly vulnerable. Most of them have moved to an ALF because they can no longer live safely on their own. Thus, the need for appropriate and adequate staffing is crucial.

Unfortunately, too often, the needs of residents go unmet or are poorly responded to due to inadequate staffing. Therefore, the establishment of staff-to-resident ratios (by facilities and/or government) can ensure that every resident has appropriate access to staff members and care services. An ALF's staffing ratio is something that potential residents should inquire about when considering a facility. It is, needless to say, an issue of ongoing interest and concern to residents, families, and those who work with them.

According to the Assisted Living Compendium, as of 2015, “[n]ineteen states specify required staffing ratios, typically for direct care staff but some for nursing staff as well.”<sup>14</sup> Whether or not a government-mandated minimum staffing ratio exists, staffing levels and competencies should be based on a comprehensive assessment of resident care needs.



<sup>14</sup> The Assisted Living Compendium, p. 31.

## Key Best Practices & Recommendations

### 1. Specify a minimum staffing ratio

- Specify a minimum number of staff, including direct care workers (DCWs) and other relevant staff (such as security personnel) that are to be in the building, depending on the number of residents in the facility at any given time and their needs.
- Specify that, at a minimum, one DCW and one staff (non-care) worker are present in the facility at all times. A ratio for additional staffing should be utilized, based on the numbers of residents in the facility and their needs/acuity.
- Both government policy and facility policy should specify appropriate staff-to-resident ratios for nights, evenings, and weekends.
- Government policy should provide appropriate ratios for facilities that are providing services beyond Instrumental Activities of Daily Living, such as dementia or memory care, “aging in place” (remaining in the facility as their clinical needs increase), Medicaid assisted living, and rehabilitation services.

### 2. Requirements for staff

- DCWs should be awake at all times while on duty.
- Specify the number of residents that each DCW must attend to during any given work day.

### 3. Disclosures

- Facilities shall disclose their daily care staffing levels based on payroll or other auditable records to the public and to the state.
- States shall post, on a public website, daily care staff for all licensed facilities in a timely manner (i.e., on a quarterly basis, within three months of the end of the quarter).
- Public records should be maintained by both the facility and the state for a minimum of three years.

## Selected State Policies

### New Mexico:

*STAFFING RATIOS: The following staffing levels are the **minimum** requirements.*

*A. The facility shall employ the sufficient number of staff to provide the basic care, resident assistance and the required supervision based on the assessment of the residents’ needs.*

*(1) During resident waking hours, facilities shall have at least one (1) direct care staff person on duty and awake at all times for each fifteen (15) residents.*

*(2) During resident sleeping hours, facilities with fifteen (15) or fewer residents shall have at least one (1) direct care staff person on duty, awake and responsible for the care and supervision of the residents.*

(3) *During resident sleeping hours, facilities with sixteen (16) to thirty (30) residents shall have at least one (1) direct care staff person on duty and awake at all times and at least one (1) additional staff person available on the premises.*

(4) *During resident sleeping hours, facilities with thirty-one (31) to sixty (60) residents shall have at least two (2) direct care staff persons on duty and awake at all times and at least one (1) additional staff person immediately available on the premises.*

(5) *During resident sleeping hours, facilities with more than sixty-one (61) residents shall have at least three (3) direct care staff persons on duty and awake at all times and one (1) additional staff person immediately available on the premises for each additional thirty (30) residents or fraction thereof in the facility.*

**B.** *Upon request of the department, the facility shall provide the staffing ratios per each twenty-four (24) hour day for the past thirty (30) days.<sup>15</sup>*

**Pennsylvania:** Administrators must be on site at the facility 36+ hours every week. Direct care workers must be awake at all times. Each day, direct care workers must provide 1+ hour of services to every mobile resident and 2+ hours to those with “mobility needs.”<sup>16</sup>

**South Carolina:** For every 8 residents, one staff member must be available and on duty in each facility building during day hours. For every 30 residents, at least one staff member during night hours. If the facility has 8+ residents or has residents with dementia, at least one staff member must be awake at night. If the facility has multiple floors, staff members must be available and on duty on each floor.<sup>17</sup>

### Sample Language for Inclusion in Policy or Regulation

We recommend New Mexico’s regulatory language, provided above, with the addition of the following provisions:

- For multi-floor facilities with 15 or more residents, at least one staff member must be awake and available on each floor at all times.
- Facilities shall disclose their daily care staffing levels based on payroll or other auditable records to the public and to the state.
- States shall post, on a public website, daily care staff for all licensed facilities in a timely manner (i.e., on a quarterly basis, within three months of the end of the quarter).
- Public records should be maintained by both the facility and the state for a minimum of three years.

<sup>15</sup> N.M. CODE R. Title 7, Chapter 8, Part 2 (January 15, 2010), <http://164.64.110.134/parts/title07/07.008.0002.html>.

<sup>16</sup> Title 55 PA. CODE Chapter 2800 (January 18, 2011), <http://www.pacode.com/secure/data/055/chapter2800/chap2800toc.html>.

<sup>17</sup> S.C. Reg. No. 61-84 (June 25, 2010), <https://www.scdhec.gov/Agency/docs/health-regs/61-84.pdf>.

## Staffing Requirements: Recreational Activities Directors

### Introduction

The availability of a range of engaging and appropriate activities is an important component of a good quality of life for everyone, no matter where he or she lives. This is particularly important in respect to assisted living, which has a business model predicated on providing residential care and services in a setting that is better tailored to meet the psycho-social needs of its residents than that provided in a traditional nursing home. Thus, one would expect that expectations for assisted living recreational and activity services will meet, if not exceed, those for nursing homes.



In fact, the federal Interpretative Guidance for nursing home care notes that “[r]esearch findings and the observations of positive resident outcomes confirm that activities are an integral component of residents’ lives.”<sup>18</sup> The Guidance adds that “maintaining contact and interaction with the community is an important aspect of a person’s well-being and facilitates feelings of connectedness and self- esteem.”<sup>19</sup> While CMS’s Interpretative Guidance reflects policies and practices for nursing homes only, residents at both nursing homes and ALFs have similar characteristics and, as noted above, quality of life expectations for ALFs are higher.<sup>20</sup>

### Key Best Practices & Recommendations

#### 1. Qualifications

- Recreational activities and social services are overseen by skilled and competent professionals (e.g., recreational therapists or certified activity professionals).
- Recreational director has training and experience in a range of activities, including social activities, physical activities, educational activities, creative activities, and spiritual activities.
- Recreational director and staff are trained on best practices for communicating with and engaging people with dementia, including non-pharmacological interventions for so-called behavioral and psychological symptoms of dementia.

#### 2. Define the recreational director’s responsibilities

- Describe the recreational director’s responsibilities in developing recreational programs and obtaining and maintaining recreational supplies.

<sup>18</sup> The Interpretative Guidance for this regulation, 42 C.F.R. § 483.24(c), can be found in Appendix PP of the State Operations Manual, available at [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_pp\\_guidelines\\_ltcf.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf).

<sup>19</sup> *Id.*

<sup>20</sup> *Federal Report Reveals Thousands of “Critical Incidents: in Assisted Living with Little Accountability; Highlights need for Federal Protections for Residents*, Long Term Care Community Coalition & Center for Medicare Advocacy (Feb. 5, 2018), <https://nursinghome411.org/consumer-statement-on-new-federal-landmark-study-on-critical-incidents-in-assisted-living-february-2018/>.

- Government policy should include a uniform term to describe the staff member responsible for recreational activities to ensure consistent application across the state/country.
- Require recreational activity staff to ensure that all residents have access to and are able to participate in activities.

### 3. Informed and involved community

- Residents, including a resident council (if one exists), and care staff should participate in planning of activities on a regular basis to ensure that activities are appropriate to meet the interests, needs, and abilities of residents.
- Whenever possible, residents should be included in the hiring process for a new recreational activities director.

### Selected State Policies

**Indiana:** The facility must have an activities director licensed as a recreational therapist, occupational therapist (OT), or an OT assistant. If he/she does not have a license, the activities director must have completed a state-approved training course to become an activities director.<sup>21</sup>

**South Carolina:** The facility must have a “recreational program staff member” in charge of program and supplies.<sup>22</sup>

### Sample Language for Inclusion in Policy or Regulation

Every facility must have a designated professional recreational activities director who is a licensed recreational or occupational therapist. The recreational director is responsible for developing recreational programs appropriate to meet the social, physical, and intellectual needs of residents. The director should ensure that all residents willing to participate in activities are able to, and that a variety of activities are scheduled on a regular basis.

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<sup>21</sup> Indiana Administrative Code, Title 410, Article 16.2-5-7.1 Activities programs (October 17, 2018), [http://www.in.gov/legislative/iac/iac\\_title?iact=410](http://www.in.gov/legislative/iac/iac_title?iact=410).

<sup>22</sup> S.C. Reg. No. 61-84 (June 25, 2010), <https://www.scdhec.gov/Agency/docs/health-regs/61-84.pdf>.

## Staff Training Requirements

### Introduction

Staff training, knowledge, and skills are essential to assisted living resident care. If staff members are not properly trained to meet residents' needs, residents will likely have a greater risk of experiencing poor outcomes and harm (such as that resulting from abuse or neglect), and even death. A number of states require assisted living facility staff to undergo specific training, and many assisted living companies, recognizing the needs of their residents, do as well.

Nevertheless, according to a recent study, the majority (54%) of staff workers, specifically direct care workers (DCWs), have “observed other staff taking shortcuts in completing work assignments that place residents at risk for neglect or harm.”<sup>23</sup> The prevalence of so-called “critical incidents” in assisted living across the country, identified by the Government Accountability Office in early 2018, provides further evidence that both standards and practices for staff training and competencies are in need of significant improvement.<sup>24</sup>

*A majority of direct care workers in assisted living have “observed other staff taking shortcuts in completing work assignments that place residents at risk for neglect or harm.”*

*- Policies to Protect Persons With Dementia in Assisted Living: Déjà Vu All Over Again?*

### Key Best Practices & Recommendations

#### 1. Require training across multiple subject areas

- Ensure that training equips staff with skills in and knowledge of a range of subject areas critical to resident safety and well-being, including: emergency preparedness, Alzheimer’s and other dementia, residents’ rights, detecting abuse and neglect, communication skills, and (as appropriate) assisting with medication.
- All staff that are in contact with residents and/or their records should also receive appropriate training in dignity, autonomy, and privacy.
- Training should address social needs and understanding of the characteristics of the populations served in ALFs.

#### 2. Specify when training must occur and how much time is required

<sup>23</sup> Kaskie, Brian P., Nattinger, Matthew, & Potter, Andrew, *Policies to Protect Persons With Dementia in Assisted Living: Déjà Vu All Over Again?*, 55 *The Gerontologist* 199-209 (2015), <http://doi.org/10.1093/geront/gnu179>. Citing Castle, N. G., Wagner, L. M., Sonon, K., & Ferguson-Rome, J. C. (2012), *Measuring administrators’ and direct care workers’ perceptions of the safety culture in assisted living facilities*, *Joint Commission Journal on Quality and Patient Safety/Joint Commission Resources*, 38, 375–382.

<sup>24</sup> *Medicaid Assisted Living Services: Improved Federal Oversight of Beneficiary Health and Welfare is Needed*, GAO-18-179 (2018), <https://www.gao.gov/products/GAO-18-179>. Hereinafter, *GAO Report*.

- Require that training be completed within the first 30 days of hire.
- Unsupervised resident contact should be prohibited prior to the completion of training.

### **3. Establish licensing/certification requirements as appropriate**

- For non-licensed care staff, specify that staff training must be done by a personal care aide training program (or its equivalent) approved by the state.

### **4. Allow for alternative training methods**

- Provide for online training programs, but for no more than half of the total required hours.

### **5. Specify types of training**

- Categorize training requirements depending on staff type (i.e., administrator, staff working with residents who have dementia, staff assisted residents with activities of daily living (ADLs)).<sup>25</sup>
- Provide for a minimum of 20-40 hours of annual training.
- Eight of the total hours for administrator training must be devoted to care for residents who have Alzheimer's and/or dementia.
- First-aid and CPR training should be required of all care staff as well as any individuals responsible for monitoring facility buildings or units overnight.

### **6. Require training assessments**

- Staff: Conduct training assessments to ensure that staff members recall what they learned during training and are implementing this knowledge appropriately while providing care.
- Facilities: Require modification of training programs for facilities that are cited for repeated deficiencies.

## **Selected State Policies**

### **California:**

Administrators must undergo 40 hours of biannual training. The training session must have eight hours covering dementia. The administrator can complete half of these hours online if approved beforehand. If the administrator has a nursing home license, he/she only needs to complete 20 hours of biannual training.

All staff must undergo training in the following topics: Housekeeping and sanitation; communication with residents; safe administration of medication; recognition of symptoms of illness; and community service and resources.

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<sup>25</sup> Activities of daily living (ADLs) include eating, bathing, getting dressed, toileting, transferring, and continence.

Staff that “assist residents with activities of daily living (ADL)” must undergo 10+ hours of training within their first four weeks and 4+ hours of annual training. Training topics include: first-aid, the aging process, personal care service, residents’ rights, medication procedures, and knowledge of addressing dementia. Direct care workers must also receive training in handling patients with health conditions.<sup>26</sup>

**Colorado:**

Administrators must undergo 30 hours of training approved by the State Department of Health. Half of these hours must include training in the following: residents’ rights, environmental and fire safety, first aid and emergency procedures.

After initial training, administrators must receive another 15 hours of training that covers addressing the specific needs of the resident populations, such as those with dementia. Topics can include medication management, proper handling of residents’ finances, addressing physical and mental illnesses, and end of life care. Staff must also receive training in the previously described topics.<sup>27</sup>

**Georgia:**

All staff must be trained in their first 60 days on the following topics:

- Residents’ rights and identifying cases on abuse, neglect, or exploitation;
- Infection control and hygiene handling;
- Knowledge pertaining to specific tasks; and
- Emergency preparedness.

Direct Care Workers (DCWs) must undergo additional training within the first 60 days on the following topics:

- Medical and social needs of residents;
- Providing individual care to residents;
- Medication assistance; and
- First aid, cardiopulmonary resuscitation.

Administrators and DCWs must complete 24 hours of additional training their first year and 16 hours annually each following year.<sup>28</sup>

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<sup>26</sup> CAL. CODE REGS. Title 22, Division 6, Chapter 8, <http://www.cdss.ca.gov/getinfo/pdf/rcfe1.PDF>.

<sup>27</sup> COLO. CODE REGS. Title 6, Chapter 7 (July 15, 2014), <http://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=5803&fileName=6%20CCR%201011-1%20Chap%2007>.

<sup>28</sup> Georgia Department of Community Health, <https://dch.georgia.gov/hfr-laws-regulations>.

**Virginia:**

All staff must complete orientation training within the first week of employment. Each DCW, except for registered nurses, must undergo certification training for first-aid within 60 days of employment.

All staff members must be trained in the following topics:

- Specific duties of their own positions;
- Emergency preparedness;
- Sanitation, infection control;
- Abuse, neglect, or exploitation of residents; and
- Resident's rights.

Administrators must complete 20 hours of annual training, five of which must cover treating residents with dementia. Direct care workers (DCWs) must complete 8+ hours of annual training, two of which must be focused on treatment of residents with dementia. DCWs must also complete first-aid and CPR training.<sup>29</sup>

### Sample Language for Inclusion in Policy or Regulation

#### Initial training.

All staff members must undergo at least 20 hours of initial training, within one week of hire. Topics covered to include:

- Identifying and addressing critical incidents, including those involving possible abuse, neglect, and exploitation of residents;
- Emergency preparedness, including instructions on safety measures in case of emergency;
- Residents' rights;
- Communication skills;
- Dementia; and
- Environmental hygiene, including washing hands, cleaning rooms, and resident hygiene.

#### Post-employment training.

All staff shall undergo a minimum of four hours of quarterly training (16 hours minimum annually). Topics covered must include the following:

- Residents' rights;
- Identifying, addressing, and preventing critical incidents; and
- Understanding dementia and dementia care standards.

DCWs must receive certification in first-aid and CPR within 30 days of hire and undergo a minimum of ten additional hours of training on the following:

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<sup>29</sup> Virginia Department of Social Services, <http://www.dss.virginia.gov/facility/alf.cgi>.

- Appropriate medication handling, including avoiding the use of drugs for sedative purposes;
- Individualized resident care; and
- Training specific to each role's required duties, including food preparation, and resident hygiene.

An assessment should be conducted every six months to ensure that staff members are able to recall and properly implement their training.

The facility administrator is responsible for ensuring that staff have sufficient knowledge and competencies in the above subject areas.

### **Administrator training.**

Administrators are required to undergo a minimum of 40 hours of annual training through a state-approved program. Twenty hours shall be devoted to (1) resident rights, (2) emergency preparedness, (3) understanding dementia and dementia care standards, and (4) proper management of staff. Seven hours of additional training on dementia and related care standards are required if the ALF accepts or retains residents with a diagnosis of dementia, has a memory care or other dementia-related unit, or provides Medicaid assisted living services.

## **Dementia Care**

### **Introduction**

About 70 percent of assisted living residents live with Alzheimer's Disease or some form of dementia.<sup>30</sup> Sadly, and all too often, policies and practices to address the needs of individuals suffering from dementia are lacking in these communities. A recent study found that, while two-thirds of sampled assisted living facility (ALF) residents had dementia, staff only identified 40 percent of these residents.<sup>31</sup>

To better address the needs of this large and growing population in assisted living, it is essential that ALFs that accept and/or retain individuals with dementia ensure that their staff have appropriate training, that physical environments are safe, and that social and other programs are tailored to meet the psycho-social needs of these individuals.

### **Key Best Practices & Recommendations**

#### **1. Provide dementia safe and friendly physical environment**

- Ensure that areas of the facility to which residents with dementia (or other cognitive impairment) have access have secured entrances and exit ways, appropriate pathways, and lighting suitable for individuals with dementia.

<sup>30</sup> Kaskie, Brian P., Nattinger, Matthew, & Potter, Andrew, *Policies to Protect Persons With Dementia in Assisted Living: Déjà Vu All Over Again?* 55 *The Gerontologist* 199-209 (2015), <http://doi.org/10.1093/geront/gnu179>. Henceforth, *Dementia Policies*.

<sup>31</sup> *Id.*

- Room doors and interiors should be individualized to help residents recognize their own rooms.
- Room furnishings should be personalized, to the extent possible, to provide a familiar and comfortable environment.
- ALFs that accept and/or retain individuals with dementia should be expected to provide “aging-in-place” within their facilities for residents, by enabling residents with dementia to safely remain in their apartment or room. In particular, appropriate services should be brought to the resident in his/her home, rather than forcing residents with dementia to undergo a potentially confusing and stressful move to a special floor or unit.

## 2. Staffing

- ACFs that provide care to residents with dementia should provide at least three hours of direct care staff time per resident per day.
- Staff should be present in the facility and awake, with the ability to monitor residents, 24-hours per day.
- A registered nurse (RN) must be employed and in the building at least one shift a day, 7-days a week, with access to an RN available at all other times.

## 3. Staff training

- Administrators and direct care workers (DCWs) should undergo, respectively, a minimum of 12 and four hours of initial training (within 30 days of employment) in dementia care.
- DCWs should undertake a minimum of eight hours of in-service training on dementia care annually.
- Administrators and other staff in the facility that are in contact with residents with dementia (including laundry, food service, social work, and janitorial staff) should undertake a minimum of four hours of dementia care training annually.
- Training should include: understanding cognitive impairment, behavioral and psychological symptoms of dementia, communication with individuals who have dementia, identifying and addressing incidents of abuse and neglect towards residents with dementia, and non-pharmacological approaches and other standards of dementia care.

*Current estimates suggest that up to 70% of AL residents experience a diagnosable form of Alzheimer’s disease or another dementia....*

*- Dementia Policies.*

## 4. Public disclosures

- All marketing materials and residency agreements should clearly articulate the scope of dementia care services provided, the licensure or certification of those providing these services, and designate any services for which an additional fee might be incurred.

## Selected State Policies

### Georgia:

*In addition to all other requirements... where an assisted living community holds itself out as providing additional or specialized care to persons with probable diagnoses of Alzheimer's Disease or other dementia or charges rates in excess of that charged other residents because of cognitive deficits which may place the residents at risk of eloping, the assisted living community must meet the following requirements:*

**(a) Written Description.** *The assisted living community must include in its licensed residential care profile an accurate written description of the special care unit that includes the following:*

- 1. a statement of philosophy and mission;*
- 2. how the services and activities of the special care unit are different from those provided in the rest of the assisted living community;*
- 3. staffing including job titles of staff who work in the unit, staff training and continuing education requirements;*
- 4. admission procedures, including screening criteria;*
- 5. assessment and service planning protocol, including criteria to be used that would trigger a reassessment of the resident's status before the customary quarterly review;*
- 6. staffing patterns, including the ratio of direct care staff to resident for a 24-hour cycle, and a description of how the staffing pattern differs from that of the rest of the program;*
- 7. a description of the physical environment including safety and security features;*
- 8. a description of activities, including frequency and type, and how the activities meet the needs of residents with dementia,*
- 9. the program's fee or fee structure for all services provided by the unit or assisted living community;*
- 10. the discharge criteria and procedures;*
- 11. the procedures that will be utilized for handling emergency situations; and*
- 12. the involvement of the unit with families and family support programs.*

**(b) Physical Design, Environment, and Safety.** *The memory care unit or special care unit must be designed to accommodate residents with severe dementia or Alzheimer's Disease in an assisted living community-like environment.... [Note: The provisions are not included here due to space limitations. See link in the footnote to access the regulatory language.]*

**(c) Staffing and Initial Staff Orientation.** *The assisted living community must ensure that the contained unit is staffed with sufficient specially trained staff to meet the unique needs of the residents in the unit.*

- 1. At a minimum, the assisted living community must employ certified medication aides in the unit to administer certain medications.*

2. *At least one staff member who is awake and supervising the unit at all times and sufficient numbers of trained staff on duty at all times to meet the needs of the residents.*

3. *Staff who, prior to caring for residents independently, have successfully completed an orientation program that includes at least the following components in addition to the general training required...:*

*(i) the assisted living community's philosophy related to the care of residents with dementia in the unit;*

*(ii) the assisted living community's policies and procedures related to care in the unit and the staff's particular responsibilities including wandering and egress control; and*

*(iii) an introduction to common behavior problems characteristic of residents residing in the unit and recommended behavior management techniques.*

**(d) Initial Staff Training.** *Within the first six months of employment, staff assigned to the unit shall receive training in the following topics:*

*1. the nature of Alzheimer's Disease and other dementias, including the definition of dementia, and knowledge of dementia-specific care needs;*

*2. common behavior problems and recommended behavior management techniques;*

*3. communication skills that facilitate better resident-staff relations;*

*4. positive therapeutic interventions and activities such as exercise, sensory stimulation, activities of daily living skills;*

*5. the role of the family in caring for residents with dementia, as well as the support needed by the family of these residents;*

*6. environmental modifications that can avoid problematic behavior and create a more therapeutic environment;*

*7. development of comprehensive and individual service plans and how to update or provide relevant information for updating and implementing them consistently across all shifts, including establishing baseline care needs;*

*8. new developments in dementia care that impact the approach to caring for the residents in the special unit;*

*9. skills for recognizing physical or cognitive changes in the resident that warrant seeking medical attention; and*

*10. skills for maintaining the safety of residents with dementia.<sup>32</sup>*

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<sup>32</sup> Georgia Healthcare Facility Regulation, Chapter 111-8-63, Rules and Regulations for Assisted Living Communities, <https://dch.georgia.gov/sites/dch.georgia.gov/files/ALC%2052018.pdf>.

**Mississippi:**

Each facility must give each resident three hours of direct care each day. One registered nurse and two staff members must be available at all times.

Staff members working in special care units must undergo orientation training covering the following topics: discharge and transfer procedures, restraint policies, knowledge of behavioral problems and behavior management, and instructions on providing proper care and treatment.

SCUs must have security systems on all entrances and exits. Facilities should facilitate residents' recognition of their own rooms through individualized design.<sup>33</sup>

**Virginia:**

Facilities must have at least two direct care workers (DCWs) available at all times in all special care units (SCU). When residents are off site, DCWs must accompany them to provide safety for those that have trouble responding to danger.<sup>34</sup>

Administrators and DCWs must undergo 12 and 4 hours of initial training in cognitive impairment, respectively. The training session should cover the following topics: definition of cognitive impairment, behavior management, communication and care for residents.<sup>35</sup>

For facilities with SCUs, facilities must have administrators and direct care workers undergo 4+ hours of initial dementia-related cognitive impairment training. The training program must be developed by someone approved by the State Department of Health or a person with professional health care experience in caring for individuals with dementia. The training should cover these additional topics: promoting individual residential care, communicating with family members, and promoting resident safety. Facilities must ensure that exits are properly secured, and security systems are available in areas that residents with dementia may access.<sup>36</sup>

**Sample Language for Inclusion in Policy or Regulation****Dementia Care Staff:**

The facility shall ensure sufficient staffing, with the appropriate knowledge and skills, to meet the needs of its residents 24-hours a day, with a minimum of three hours of direct care staff time per resident day, 7-days a week. For facilities with a dementia care, "memory care," or other type of special care unit, or which are otherwise providing care to residents diagnosed with dementia, there shall be a minimum of one direct care worker (DCW) present and awake at all times. A registered nurse (RN) must be employed and in the building at least one shift a day, 7-days a week, with access to an RN available at other times.

**Dementia Care Training:**

DCWs should undertake a minimum of eight hours of in-service training on dementia care annually. Administrators and other staff in the facility that are in contact with residents with

<sup>33</sup> Mississippi State Department of Health, Health Facilities Licensure and Certification: Alzheimer's Unit, Minimum Standards (October 2012), [http://msdh.ms.gov/msdhsite/\\_static/30,0,83,60.html](http://msdh.ms.gov/msdhsite/_static/30,0,83,60.html).

<sup>34</sup> Virginia Department of Social Services, <http://www.dss.virginia.gov/facility/alf.cgi>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

dementia (including laundry, food service, social work, and janitorial staff) should undertake a minimum of four hours of dementia care training annually. Training must cover the following topics: understanding cognitive impairment, behavioral and psychological symptoms of dementia, communication with individuals with dementia, identifying and addressing incidents of abuse and neglect towards residents with dementia, and non-pharmacological approaches and other standards of dementia care.

Facilities shall ensure that exits and entrances to all units and buildings, as well as any grounds to which residents with dementia have access, are properly monitored and protected by security devices to ensure residents' safety.

## Oversight & Quality Assurance

### Introduction

Inspections, commonly referred to as surveys, are conducted by state agencies as a means by which to ensure that a provider is in compliance with minimum standards of care and, in the case of residential care settings, that residents are living in a safe environment that is free from abuse or neglect. For nursing homes, surveys are conducted annually by states under the direction and oversight of the federal Centers for Medicare & Medicaid Services (CMS). Because there are, essentially, no federal safety standards for assisted living, CMS does not play a role in assisted living oversight. Thus (as of 2018), the extent to which assisted living facilities (ALFs) are subject to quality assurance, safety inspections, and responses to abuse and neglect are a matter individual state laws and policies. State policies and practices in this regard vary widely, however, as a general rule, oversight is considerably more lax for assisted living than it is for nursing homes. The assisted living industry argues that this is appropriate, since it is predicated on a social rather than a medical model. However, when an ALF accepts or retains residents who have dementia or other care and monitoring needs, the lack of oversight can put them at risk.



### Key Best Practices & Recommendations

#### 1. Regular surveys

- Surveys should take place at the time of licensure and on an annual basis thereafter.
- In addition, the survey agency should conduct an in-person investigation any time that a complaint alleging resident harm, including abuse, neglect, suspicion of a crime, or a “critical incident” is made to the agency or another government agency, including law enforcement.

#### 2. Survey practices & protocols

- Similar to the protocols in place for nursing homes, surveys should be unannounced and conducted at different times to reduce predictability.
- Policies should provide for follow-up surveys, such as when a facility has been cited for multiple unaddressed violations.
- The local Long Term Care Ombudsman Program should be notified when a facility is surveyed.

- Survey teams should include a dietician, nurse, and social worker.
- Survey protocols should include interviews with residents as well as resident and family councils (where they exist).
- Survey protocols should include observation of dining, medication management, and resident activities, as well as record review of a sample of residents. The sample should include (as applicable) residents with a diagnosis of dementia, Medicaid beneficiaries, and residents requiring medication administration.

### Selected State Policies

**Florida:** Facilities must be inspected before being licensed and any time afterwards as the licensing agency finds necessary. After the first inspection, all inspections are to be unannounced. The facility must renew their license every 2 years.<sup>37</sup>

**Massachusetts:** Facilities are inspected before licensure and every two years after for license renewal. During the inspection, the following are examined:

- Living areas;
- Resident records; and
- Resident satisfaction survey

Inspectors may also interview staff and residents. Inspections may be performed at any given time without prior notice.<sup>38</sup>

**Nebraska:** Facilities are inspected before licensure and any time thereafter. The state department of health randomly selects 25 percent of the state licensed facilities to receive an inspection each year.<sup>39</sup>

### Sample Language for Inclusion in Policy or Regulation

Assisted living facilities (ALFs) shall be surveyed by the state prior to licensure and annually. Inspections must occur unannounced and at any additional time deemed necessary by the survey agency, including in response to allegations of critical incidents involving abuse, neglect, or exploitation of any resident. The survey team shall include a registered nurse, dietician, and licensed social worker.

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<sup>37</sup> Florida Agency for Health Care Administration: Assisted Living Facility,

[http://www.ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/alf.shtml](http://www.ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/alf.shtml).

<sup>38</sup> Title 651 MASS. CODE REGS Section 12.00 (August 23, 2006), <http://www.mass.gov/elders/docs/651cmr-1.doc>.

<sup>39</sup> Title 175 NEB. ADMIN. CODE Chapter 4: Assisted Living Facilities (April 3, 2007), [http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health\\_and\\_Human\\_Services\\_System/Title-175/Chapter-04.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-175/Chapter-04.pdf).

## Resident and Family Councils

### Introduction

Resident and family councils can make a significant, positive difference in the lives of assisted living residents. As noted by the California Advocates for Nursing Home Reform (CANHR), “While the primary purpose of a family council is for families, as a group, to influence the quality of care for the residents, they also offer a forum to enhance communications with the facility staff and offer peer support for the relatives and friends of residents.”<sup>40</sup> Both resident and family councils can foster a unified voice in addressing issues concerning resident care and quality of life. For assisted living facility (ALF) operators, they provide a means by which to learn about – and address – safety and customer satisfaction issues before they rise to the level of a citation, poor Yelp review, or even a lawsuit.

*While the primary purpose of a family council is for families, as a group, to influence the quality of care for the residents, they also offer a forum to enhance communications with the facility staff and offer peer support for the relatives and friends of residents.*

- CANHR: *Organizing Family Councils in Long Term Care Facilities*

### Key Best Practices & Recommendations

#### 1. Encourage the formation of councils

- Provide for rights of both residents to form resident councils and families/friends to form family councils.
- Require ALFs to have information about the resident and family councils in residency agreements, posted in prominent places throughout the facility, and provided to residents at least once per year.
- Require ALFs to provide private meeting space for councils and to respect the privacy of meetings by only attending upon invitation of the council.
- ALFs are encouraged to ensure that the purpose of resident and family councils is explained to residents and their families (as well as staff) and to remind residents and families of their right to form councils.

#### 2. Role of councils

- State agencies should be expected to meet privately with resident and family councils during a survey and, when potentially relevant, in investigating a complaint.
- ALFs should be required to respond in writing to grievances raised by councils within 14 days.
- ALFs are strongly encouraged to involve residents and families in the development of dining and activity planning, grievance procedures, and other facility processes.
- ALFs are encouraged to allow resident and family representatives to be voting members on the facility board/oversight committee.

<sup>40</sup> *Organizing Family Councils in Long Term Care Facilities* (2104), California Advocates for Nursing Home Reform (CANHR), <http://www.canhr.org/familycouncils/FCBook.pdf>.

### 3. Specify enforcement policies

- Violating a resident or family member's right to form, maintain, and/or participate in a council should result in financial penalties, particularly in cases of repeated complaints and/or citations.

#### Selected State Policies

**California:** Facilities must provide residents with information on their right to form resident and family councils. When resident or family councils make a written request to address certain issues, staff must respond within 14 days whether they will address them. Staff may not willfully interfere in family or resident council activities. Willful interference includes preventing residents and families from gathering for council meetings, not responding to council requests, and retaliating against council members.<sup>41</sup>

**Virginia:** Facilities must allow and help residents to form resident councils. Resident councils have the right to have anyone as a member, including family and friends. Councils have the right to meet privately without staff interference. Staff must help residents with scheduling meetings, providing meeting space, and displaying information for meetings. Facilities must also annually inform residents of their right to form and maintain a council.<sup>42</sup>

**Idaho:** Facilities must allow residents and families to form a resident council. Council members can include family and friends. The council should provide a grievance policy for the facility, raise resident concerns to facility, and raise issues with facility that need to be addressed.<sup>43</sup>

#### Sample Language for Inclusion in Policy or Regulation

Facilities shall allow residents and their families and friends to form resident and family councils, respectively. A private space shall be provided to a council for meetings. Facility staff may only attend council meetings at the express invitation of council members.

Facilities shall provide a written statement detailing the right to form and participate in councils to newly admitted or prospective residents, post notices of upcoming meetings in public spaces (including any community bulletin boards), and inform residents of the right to participate in a council, at least annually, in a language and format that the resident understands.

Facilities must respond to concerns and complaints raised by a council within 14 days, in writing (upon request). Facilities are prohibited from interfering with council meetings or retaliating against an individual for participating in a council or for filing a concern or complaint.

Councils are permitted to invite guests to attend meetings, including non-residents, such as family members, LTC ombudsmen, and representatives of advocacy groups.

Facilities that fail to meet these standards are subject to citation and a financial penalty for repeat violations.

<sup>41</sup> CAL. CODE REGS. Title 22, Division 6, Chapter 8, <http://www.cdss.ca.gov/getinfo/pdf/rcfe1.PDF>.

<sup>42</sup> Virginia Department of Social Services, <http://www.dss.virginia.gov/facility/alf.cgi>.

<sup>43</sup> IDAHO ADMIN. CODE Title 3, Chapter 22, <https://adminrules.idaho.gov/rules/2001/16/0322.pdf>.

## Abuse and Neglect

### Introduction

Sadly, as the Government Accountability Office's (GAO) 2018 report on the prevalence of "critical incidents" in assisted living illustrates, tens of thousands of assisted living facility (ALF) residents (if not more) are at risk every day. In addition to the prevalence of abuse, neglect, and other problems, the GAO identified significant failures among state agencies to even review critical incident reports and LTC Ombudsman findings. These findings indicate that there is an urgent need to strengthen resident protections at every level from the individual assisted living to the state and federal levels.

*More than half of the 48 states providing these services couldn't tell us the number or nature of critical incidents in assisted living facilities. In addition, states may not be monitoring things you might expect them to. For example, 3 states don't monitor unexpected or unexplained deaths.*

- GAO Report

### Key Best Practices & Recommendations

#### 1. Staff training

- All ALF employees should undertake training upon employment that includes coverage of identifying, preventing, and reporting abuse, neglect, and other critical incidents.
- Any ALF employee who has contact with residents, including care staff, recreational and social work, food service, and housekeeping staff, should undergo annual training on identifying, preventing, and reporting abuse, neglect, and other critical incidents.

#### 2. Standards for prospective employees

- Prohibit facilities from hiring prospective employees that have a history of abuse, neglect, or exploitation. In addition to checking if an individual is excluded from providing Medicare/Medicaid services, a criminal background check (including for sex offenders) should be conducted for every employee working in a facility in any capacity.

#### 3. Detect, report, and address abuse and neglect

- Establish requirements for reporting abuse and neglect, including who to contact (depending on the nature of the abuse or neglect, this would include local law enforcement, adult protective services, the state enforcement agency, the LTC Ombudsman Program, and/or state licensing boards), timeframe in which to report, and penalty for failing to report on time or at all. These protocols should be provided to all staff upon hire and posted in at least one public space and one employee space in a facility.
- Timeframe for reporting: as soon as possible and no later than two hours after the incident in cases of possible physical harm and, in other cases, no later than 24-hours after the critical incident is discovered.

- States should have a consistent definition of what comprises a “critical incident” and be expected to monitor and review such incidents on an ongoing basis.
- State surveyors should undergo annual training focused on supporting their ability to identify and evaluate potential incidents of abuse, neglect, exploitation, and other critical incidents. This training should include protocols for identifying critical incidents among vulnerable populations, such as individual with dementia, the elderly and disabled, and those with serious mental health conditions.
- States should publish information on substantiated critical incidents on its website on a quarterly basis, including the names of the ALFs in which the critical incident took place.

### Selected State Policies

**Kansas:** Facilities must have all staff members receive training covering the “prevention of abuse, neglect, or exploitation of residents.”<sup>44</sup>

**Louisiana:** Facilities must provide an orientation training program for all staff members covering the “procedures for and legal requirements concerning the reporting of abuse and critical incidents.”<sup>45</sup>

**Maine:** The facility must not hire anyone who has been involved in cases of abuse, neglect, or exploitation in a healthcare facility.<sup>46</sup>

**Pennsylvania:** Facility must hold an orientation training for staff members to inform them of various topics, including “mandatory reporting of abuse and neglect.”<sup>47</sup>

### Sample Language for Inclusion in Policy or Regulation

Assisted living facilities shall provide a training program to all employees working in the facility on resident abuse and neglect. The training shall take place upon hire and annually.

The training must include the following:

- Definition of abuse, neglect, exploitation, and other “critical incidents” as defined by the state or federal government;
- Situations that constitute abuse, neglect, and exploitation;
- Approaches to mitigating and/or preventing critical incidents; and
- Appropriate responses to critical incidents (including when incidents should be reported to law enforcement or other authorities);

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<sup>44</sup> KAN. STAT. ANN. Chapter 39,  
[http://www.aging.ks.gov/PolicyInfo\\_and\\_Regs/ACH\\_Current\\_Regs/ALF\\_Regs\\_Complete.pdf](http://www.aging.ks.gov/PolicyInfo_and_Regs/ACH_Current_Regs/ALF_Regs_Complete.pdf).

<sup>45</sup> LA. ADMIN. CODE Title 48, Chapter 88 (March 31, 1999),  
<http://new.dhh.louisiana.gov/index.cfm/directory/detail/702>.

<sup>46</sup> Title 10-144 ME. CODE R. Chapter 11 (August 20 2008), <http://www.maine.gov/sos/cec/rules/10/ch113.htm>.

<sup>47</sup> Title 55 PA. CODE Chapter 2800 (January 18, 2011),  
<http://www.pacode.com/secure/data/055/chapter2800/chap2800toc.html>.

- Precautions that staff must take if they are unsure whether a specific situation constitutes abuse, neglect, or exploitation; and
- The facility's policy prohibiting retaliation against those who report a critical incident.

Any instance of suspected abuse, neglect, or exploitation shall be reported to the state regulatory agency as soon as possible and no later than two hours after the incident in cases of possible physical harm to a resident or 24 hours in cases where physical harm is not suspected. Failure to properly respond to and report these incidents may result in a penalty, including monetary penalty or forfeiture of license, as determined by the state agency. It is the responsibility of the administrator to ensure that these requirements are implemented.

The state agency shall develop and publish a schedule of fines and other penalties for substantiated cases of critical incidents and the failure to report such incidents.

## Transfer and Discharge

### Introduction

Unwanted transfers or discharges from a nursing home can be devastating for residents, affecting their physical health and safety, as well as their psychological well-being. From a consumer perspective, it is essential that the conditions under which a resident may face transfer or discharge from a facility are clear and that there are protocols and protections in place to ensure that residents are not subject to inappropriate and potentially harmful discharges. According to the National Long-Term Care Ombudsman Resource Center, "Transfer and Discharge continues to be one of the top complaints that ombudsmen report encountering, and these cases can be complex and extremely time consuming."<sup>48</sup>

*Transfer and Discharge continues to be one of the top complaints that ombudsmen report encountering, and these cases can be complex and extremely time consuming.*

<sup>48</sup> National Long-Term Care Ombudsman Resource Center

### Key Best Practices & Recommendations

#### 1. Specific conditions

- Policy should concisely provide for the conditions under which a resident may face discharge or transfer from a facility.

#### 2. Limitations of discharge

Permissible conditions should be limited to:

- Inability to safely care for the resident;
- Resident is a danger to self or others;
- Resident is unable to or refuses to pay for services after reasonable and appropriate notice given (for assisted living facilities (ALFs) that accept Medicaid, the resident must also be afforded a meaningful opportunity to apply for those benefits); or

<sup>48</sup> The National Long-Term Care Ombudsman Resource Center, <http://ltombudsman.org/issues/transfer-discharge>.

- The ALF ceases to operate.
- A facility may not discharge a resident because the resident or the resident's legal representative has installed or requested a video monitoring device in the individual's room.

### 3. Discharge notice

- Notice of discharge must be provided at least 30 days in advance to resident and his/her representative unless resident's presence in the facility poses an immediate danger to the safety of the resident or others. In such instances, the facility must document the nature of the danger, the steps taken (if any) to ameliorate it, and how the setting to which the resident has been transferred is able to safely and appropriately respond to the danger.
- Discharge notices must include, in language that the resident or representative can understand:
  - The reason for transfer or discharge;
  - The effective date of transfer or discharge;
  - The location to which the resident is transferred or discharged; and
  - The names and telephone numbers of the state and local Long Term Care Ombudsman programs and the representative in Congress for the district in which the facility is located.

### 4. Appeal rights

- Residents should be given the opportunity for an informal conference with ALF staff if requested within 10 days of receipt of the discharge notice. The resident may designate representatives to join in the conference, including families, LTC ombudsman, and others of his/her choosing.
- Residents have the right to appeal a discharge notice.

### 5. Discharge planning

- The facility must provide discharge planning to prepare and orient a resident.
- It is the facility's responsibility to ensure safe, appropriate, and orderly transfer or discharge.

## Selected State Policies

### Hawaii:

Facilities must provide the resident 14 days of written notice of a potential discharge. Reasons for discharge including if the resident is a threat to others or to self, if facilities cannot support the resident with their services, and if facility finds that the resident has not complied with facility rules and agreements.

Facilities must offer residents an “opportunity of an informal conference if requested, in writing, within 10 days of receipt of discharge notice.” During the conference, the resident and supportive members (family members and friends) speak with facility members to determine if “a satisfactory resolution can be reached.”<sup>49</sup>

#### **South Dakota:**

***Admission, transfer, and discharge policies.*** *A facility shall establish and maintain policies and practices for admission, discharge, and transfer of residents that prohibit discrimination based upon payment source. The facility shall notify each resident at or before the time of admission of these policies and practices. The policies and practices shall include the following provisions:*

*(1) The resident may remain in the facility and may not be transferred or discharged unless the resident's needs and welfare cannot be met by the facility, the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility, the safety or health of persons in the facility is endangered by the resident, the resident has failed to pay for allowable billed services as agreed to, or the facility ceased to operate;*

*(2) The facility shall notify the resident and a family member or client advocate in writing at least 30 days before the transfer or discharge unless a change in the resident's health requires immediate transfer or discharge or the resident has not resided in the facility for 30 days. The written notice shall specify the reason for and effective date of the transfer or discharge and the location to which the resident will be transferred or discharged;*

*(3) The conditions under which the resident may request or refuse transfer within the facility; and*

*(4) A description of how the resident may appeal a decision by the facility to transfer or discharge the resident.<sup>50</sup>*

#### **Utah:**

*(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:*

*(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to the health or safety to self or others, or the facility is not able to provide required medical treatment.*

*(b) The resident fails to pay for services as required by the admission agreement.*

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<sup>49</sup> Hawaii Administrative Rules, Department of Health, Title 11, Chapter 90, <https://health.hawaii.gov/opppd/files/2015/06/11-901.pdf>.

<sup>50</sup> Administrative Rules of South Dakota, 44:70:09:14, Admission, transfer, and discharge policies, <http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=44:70:09:14>.

*(c) The resident fails to comply with written policies or rules of the facility.*

*(d) The resident wishes to transfer.*

*(e) The facility ceases to operate.*

*(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.*

*(a) The notice shall be either hand-delivered or sent by certified mail.*

*(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:*

*(i) the safety or health of persons in the facility is endangered; or*

*(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.*

*(3) The notice of transfer or discharge shall:*

*(a) be in writing with a copy placed in the resident file;*

*(b) be phrased in a manner and in a language the resident can understand;*

*(c) detail the reasons for transfer or discharge;*

*(d) state the effective date of transfer or discharge;*

*(e) state the location to which the resident will be transferred or discharged;*

*(f) state that the resident may request a conference to discuss the transfer or discharge; and*

*(g) contain the following information:*

*(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;*

*(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and*

*(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.*

*(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.*

*(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.*

*(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.*

*(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.*

*(6) The facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room....<sup>51</sup>*

### **Virginia:**

The facility must “assist the resident and his legal representative, if any, in the discharge or transfer process.”<sup>52</sup>

### **Sample Language for Inclusion in Policy or Regulation**

Assisted living facilities shall not transfer or discharge a resident, except under the following conditions: inability to safely care for the resident; resident is a danger to self or others; resident is unable to or refuses to pay for (or, in cases of Medicaid assisted living, apply for benefits for) services after reasonable and appropriate notice given; or the facility ceases to operate.

A facility is prohibited from discharging a resident as a form of punishment or retaliation or because the resident has installed, or requested, a video monitoring device in the resident’s room.

A facility shall provide written notice of transfer or discharge no less than 30 days before carrying out the transfer/discharge. The discharge notice must be provided in writing in person or via certified mail to the resident, his or her representative, and any responsible party. The notice shall be in a language that the resident (or representative) can understand and provide the reason for transfer or discharge; the effective date of transfer or discharge, the location to which the resident is to be transferred or discharged, notice of the resident’s right to appeal, and the names and telephone numbers of the state and local Long Term Care Ombudsman Programs and the representative in Congress for the district in which the facility is located.

<sup>51</sup> Utah Administrative Code, Title 432 Health, Health Systems Improvement, Licensing, R432-270-11 Assisted Living Facilities, Transfer and Discharge, <https://rules.utah.gov/publicat/code/r432/r432-270.htm> - T11.

<sup>52</sup> Virginia Department of Social Services, <http://www.dss.virginia.gov/facility/alf.cgi>.

## Consumer Information & Disclosures

### Introduction

Transparency and consumer information are helpful to residents when making a determination about the assisted living facility (ALF) they will call home. Residents and their families should be given all the facts about an ALF's practice and policies in regards to how it will meet the needs of each resident. Without accurate consumer information, residents may be placed at risk of not having specific care needs met by the facility's staff.

### Key Best Practices & Recommendations

#### 1. Types of information disclosed

- Admission, retention, and discharge policies.
- Direct care staff ratios for day, evening, and night.
- Whether or not an RN is employed by the facility and, if so, in what capacity (i.e., full or part time and present in the facility or on-call).
- Services provided and their cost, including additional fees, if any, for services or activities that the facility provides or arranges.
- Residents' rights (as enumerated in state or federal law and regulation).
- Activities available to residents at the facility, including any for which there are additional fees (if applicable).
- Medication policies.
- Dementia care policy, including whether individuals with dementia are admitted, the conditions upon which a resident with dementia may be discharged, special services provided for residents with dementia (if any), additional charges for dementia services (if any), facility policies in respect to the use of psychoactive medications and non-pharmacological approaches to dementia care (if any).
- What payment sources the facility accepts and limitations, if any (for instance, if a facility accepts Medicaid, but only for a limited number of residents).
- Facility policy in respect to room accommodations (i.e., single or double, notice provided prior to a room change, limitations on where certain residents can live (for instance, if the facility designates certain rooms or floors as serving individuals with dementia or whose payment source is Medicaid)).

#### 2. Provision of disclosure information

- The disclosure statement or information shall be prominently displayed on the facility's website.
- Printed copies shall be provided to all prospective residents and families, to residents or their representatives at the time of admission, and available at the front desk or other prominent public space in the facility at all times.
- State agencies should provide the disclosure statement for each licensed facility in electronic form on its website.

## Selected State Policies

### Arkansas:

Facilities must provide residents with a disclosure statement detailing the following information: care that facility offers, emergency preparedness, facility and service costs, and staffing information. The disclosure statement must be given to an individual before that person becomes a resident.<sup>53</sup>

### Florida:

Facilities that provide services to individuals with dementia must provide a separate disclosure statement that is distinct from the statement given to residents that do not have dementia. The facility must provide the disclosure statement specific to residents with dementia or Alzheimer's to anyone that requests it.<sup>54</sup>

### Illinois:

Facilities that have a special care unit (SCU) for residents with Alzheimer's or dementia must provide a disclosure statement with the following information:

- Services offered that are specific to residents with dementia;
- Philosophy of care for residents with dementia;
- Admission and discharge policies;
- Care plan for residents with dementia;
- Staff ratios;
- Service costs; and
- Family involvement in care of resident.

The disclosure statement must be provided to both the licensing state agency and the prospective resident and/or family member.<sup>55</sup>

## Sample Language for Inclusion in Policy or Regulation

Facilities shall provide prospective residents and every resident, upon admission or request, a comprehensive disclosure statement. The disclosure statement shall be posted on the facility's website. The statement should include the following elements, in a form and language understandable by residents (or, for residents with cognitive impairment, their representatives):

- Admission, retention, and discharge policies;
- Direct care staff ratios for day, evening, and night;

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<sup>53</sup> ARK. CODE R. § Assisted Living Facilities Level I, (LexisNexis August 1, 2011), <http://humanservices.arkansas.gov/dms/oltcDocuments/alfi.PDF>.

<sup>54</sup> Agency for Health Care Administration: Assisted Living Facility, [http://www.ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/alf.shtml](http://www.ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/alf.shtml).

<sup>55</sup> ILL. ADMIN. CODE Title 77, Chapter 1, Subchapter c, Part 295 (August 16, 2012), <http://www.ilga.gov/commission/jcar/admincode/077/07700295sections.html>.

- Whether or not an RN is employed by the facility and, if so, in what capacity (i.e., full or part time, present in facility or on-call);
- Services provided and their cost, including additional fees, if any, for services or activities that the facility provides or arranges;
- Activities available to residents at the facility, including any additional fees (if applicable);
- Medication policies;
- Dementia care policy, including whether individuals with dementia are admitted, the conditions upon which a resident with dementia may be discharged, special services provided for residents with dementia (if any), additional charges for dementia services (if any), facility policies in respect to the use of psychoactive medications and non-pharmacological approaches to dementia care (if any);
- The payment sources the facility accepts and limitations, if any (for instance, if a facility accepts Medicaid, but only for a limited number of residents); and
- Facility policy in respect to room accommodations (i.e., single or double, notice provided prior to a room change, limitations on where certain residents can live (for instance, if facility designates certain rooms or floors as serving individuals with dementia or whose payment source is Medicaid)).

## Public Information: Ownership

### Introduction

Assisted living facilities may be owned by a range of entities, from large corporations to individuals to nonprofit organizations. The availability of public information on assisted living ownership provides transparency for potential residents and other stakeholders, and is a means by which to foster greater accountability for quality, safety, and value.

### Key Best Practices & Recommendations

#### 1. Publication

- Ownership information should be posted on the facility's website and on the state agency's website (including with any state hosted or supported listing of facilities).
- Ownership information should be publicly displayed in the facility and available, upon request, at the front desk or reception.

#### 2. Information provided

- Any individual or entity with 5% or greater interest in the facility.
- Name of facility administrator.
- Ownership type (i.e., for-profit, non-profit, government).
- Contact information for the owner(s) and administrator, including mailing address, phone number, and email address.
- Date of last change of ownership.

- Name of previous owner if change of ownership occurred within last 12 months.

### Selected State Policies

**Florida:** Facilities are to provide information online regarding the agency that owns the facility, as well as the date the ownership began. This information should be made available to the public on the online Florida Department of Health Assisted Living search directory.<sup>56</sup>

**Indiana:** Facilities are to describe both current and previous owners of the facility, ownership type, and date of last change in ownership. This information should be made available to the public on the online Indiana Department of Health Assisted Living search directory.<sup>57</sup>

### Sample Language for Inclusion in Policy or Regulation

Facilities shall report ownership information to the state agency and post such information on its website and in its facility. The information provided must include the following:

- Names of individuals and entities with 5% or greater ownership interest;
- Name of administrator;
- Type of ownership (such as corporation, private, or non-profit);
- Contact information of current owner, including mailing address, email address, and phone number;
- Notice of any changes in ownership in last 12 months;
- Name of previous owner (if change in last 12 months); and
- Date of approval of owner's license.

## Public Information: Survey Reports & Complaint Investigations

### Introduction

Government surveys (inspections) and responses to complaints are the primary means by which assisted living facilities (ALFs) are held accountable for resident safety. As the Government Accountability Office's recent report<sup>58</sup> and other studies have shown, too often, states are not adequately tracking and addressing safety and other problems in assisted living. The absence of federal quality standards makes this situation particularly treacherous for residents and potential residents alike. While some assisted living provide excellent care and quality of life others do not and, in the absence of strong standards and vigorous enforcement, there is little to protect individuals and families from choosing an ALF that is unsafe or unable to meet their needs.

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<sup>56</sup> Florida Agency for Health Care Administration: Assisted Living Facility, [http://www.ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/alf.shtml](http://www.ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/alf.shtml).

<sup>57</sup> Indiana State Department of Health Website: information and contacts for Residential Care Facility Licensing Program, <http://www.in.gov/isdh/20227.htm>.

<sup>58</sup> See GAO Report.

While no substitute for meaningful standards and enforcement, access to information about an ALF's compliance record is an important tool for both potential and current residents and those who work with them. It can help potential residents make informed decisions. It can help current residents gain insights into care or other issues identified in their community and work with staff and others to address those issues. By providing some transparency to the public, it can encourage all providers to excel.

### Key Best Practices & Recommendations

#### 1. Information to be included in or with survey reports

- Survey or inspection type (e.g., monitoring, initial licensure, complaint).
- Details of any substantiated deficiencies (similar to those provided on the federal 2567 forms used for nursing home survey reports).
- Date of survey or investigation and whether it was conducted in person or remotely.
- Plan of correction (where applicable).
- Date of correction.
- Number of complaints received in the previous year and the number which have been substantiated.
- Fines or other penalties imposed.

#### 2. State disclosures

- Both summaries and electronic versions of survey reports should be posted on the state's website, including in any directory of ALF providers and, for summary data, in a public database.
- A copy of any enforcement letter or notice of violation to the facility should be posted on the state's website.
- The public database should include: provider name, street address, city, and county; number and types of deficiencies; date of the survey and whether it was conducted in person or remotely; date of the correction; number of complaints received and substantiated for the year; whether or not a penalty was imposed; type of penalty (for fines, the amount of the fine).
- An electronic copy of the survey report should be sent to the state and local Long Term Care Ombudsman Programs, the local adult protective services agency, the U.S. Attorney's office for the district in which the facility is situated, the local Area Agency on Aging, and the district offices of the state and federal legislators.

*Assisted living facilities don't have to do incident reports the way that nursing homes do. So in most states, you don't even know what the rate of falls is.*

*But state licensing agencies ought to be identifying that as a problem. If you walk in a facility and you look at their incident reports and you see 100 falls in the last year for 70 patients, you ought to be going insane and figuring out what's going on. Why are they falling? What kind of assessment do they have at the falls? What kind of prevention do they have? ...*

*- PBS Frontline, [Catherine Hawes: Assisted Living is a "Ticking Time Bomb."](#)*

- Information should be retained in directories and databases for a minimum of five years.

### 3. Facility disclosures

- Copies of survey reports should be made available to residents and visitors for a minimum of five years.
- Notice of the availability of the survey reports should be posted in a public location in the facility (such as a community bulletin board) and included in the materials furnished to prospective and incoming residents.

## Selected State Policies

### Florida:

*(1) Every facility shall maintain, as public information available for public inspection under such conditions as the agency shall prescribe, records containing copies of all inspection reports pertaining to the facility that have been issued by the agency to the facility. Copies of inspection reports shall be retained in the records for 5 years from the date the reports are filed or issued.*

*(2) Within 60 days after the date of the biennial inspection visit required under s. [408.811](#) or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ombudsman council in the district where the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district Adult Services and Mental Health Program Offices.*

*(3) Every facility shall post a copy of the last inspection report of the agency for that facility in a prominent location within the facility so as to be accessible to all residents and to the public. Upon request, the facility shall also provide a copy of the report to any resident of the facility or to an applicant for admission to the facility.<sup>59</sup>*

## Sample Language for Inclusion in Policy or Regulation

The state agency shall post online all reports of surveys and complaint investigations as soon as possible and no later than 60 days following an investigation. Posting shall include: (1) Survey or inspection type (e.g. monitoring, initial licensure, complaint); (2) Details of any substantiated deficiencies; (3) Date of survey and whether it was conducted in person or remotely; (4) Plan of correction (where applicable); (5) Date of correction; (6) Number of complaints received in the previous year and the number of which have been substantiated; and (7) Summary information (including type and number of citations). Posting shall be included in any state listing of assisted living facilities. Summary information shall be included in a publicly available state database. All survey and complaint data shall be made available for a minimum of five years.

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<sup>59</sup> Florida Statutes, Title XXX, Chapter 429.35, [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0400-0499/0429/Sections/0429.35.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0429/Sections/0429.35.html).

Once a survey or complaint investigation is completed, but no later than 60 days, the survey agency is required to provide the survey report to the state and local Long Term Care Ombudsman, the local adult protective services agency, the U.S. Attorney for the district, the local Area Agency on Aging, and the district offices of the state and federal legislators.

Facilities shall maintain, as public information and available for public inspection, records containing copies of all inspection reports pertaining to the facility. Copies of inspection reports shall be retained and available for a minimum of five years from the date the reports are filed or issued. The facility shall post notice of the availability of inspection reports and their results in a public place in the facility as well as in resident admission materials.

## **Additional Information and Resources**

This report provides a framework for understanding and addressing some of the most relevant issues affecting quality of care and quality of life for assisted living residents. Needless to say, it is not meant to be comprehensive but, rather, to provide focused discussion, examples, and recommendations for policies that support practices which we have identified as merit worthy. We encourage residents, families, providers, policymakers, and other stakeholders to use the information provided in this report as a basis for developing practicable and beneficial policies and practices. To assist in this effort, following are additional data and resources. In addition, LTCCC has compiled a user-friendly chart with information on state assisted living rules and regulatory requirements. The chart can be found in the [Assisted Living section](#) of our website, [www.nursinghome411.org](http://www.nursinghome411.org).

## Appendix 1: Resources for More Information or Assistance

[Assisted Living Guidebooks: Fostering Independence, Choice, and Decision-Making](https://nursinghome411.org/assisted-living/), Long Term Care Community Coalition and Coalition of Institutionalized Aged and Disabled, <https://nursinghome411.org/assisted-living/>. There are four guides, directed at prospective residents, current residents, direct care workers, and assisted living administrators (respectively). Each guide provides tailored information on how to foster resident choice and independence.

[The Compendium on Assisted Living](https://aspe.hhs.gov/basic-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition#overview) created in 2015 provides summarizes of practices and policies on Assisted Living within each state, <https://aspe.hhs.gov/basic-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition#overview>.

[Policies to Protect Persons With Dementia in Assisted Living: Déjà Vu All Over Again?](http://doi.org/10.1093/geront/gnu179), 55 The Gerontologist 199-209 (2015), Kaskie, Brian P., Nattinger, Matthew, & Potter, Andrew, <http://doi.org/10.1093/geront/gnu179>.

[Medicaid Assisted Living Services: Improved Federal Oversight of Beneficiary Health and Welfare is Needed](https://www.gao.gov/products/GAO-18-179), U.S. Government Accountability Office, GAO-18-179 (2018), <https://www.gao.gov/products/GAO-18-179>.

[2018 Assisted Living State Regulatory Review](https://www.ahcancal.org/ncal/advocacy/regis/Documents/2018%20AL%20State%20Regulatory%20Report.pdf), National Center for Assisted Living, <https://www.ahcancal.org/ncal/advocacy/regis/Documents/2018%20AL%20State%20Regulatory%20Report.pdf>.

The National Consumer Voice for Quality Long-Term Care provides a range of information on its website, including [Assisted Living Fact Sheets](http://theconsumervoice.org/home). The Consumer Voice's homepage is <http://theconsumervoice.org/home>.

[Organizing Family Councils in Long Term Care Facilities](http://www.canhr.org/familycouncils/FCBook.pdf), California Advocates for Nursing Home Reform (CANHR), <http://www.canhr.org/familycouncils/FCBook.pdf>.

[A Place for Mom](https://www.aplaceformom.com/planning-and-advice/senior-housing-101/assisted-living-state-licensing) offers rankings of states based on transparency of information they make available to the public regarding assisted living facilities, <https://www.aplaceformom.com/planning-and-advice/senior-housing-101/assisted-living-state-licensing>. Please note that we do not recommend using this or any other private resource as a basis for selecting a facility.

[6 Must-Ask Questions for Assisted Living Activity Directors](http://www.ssmgrp.com/blog/6-must-ask-questions-for-assisted-living-activity-directors/), Senior Solutions Management Group, <http://www.ssmgrp.com/blog/6-must-ask-questions-for-assisted-living-activity-directors/>. This organization recommends always interviewing the activities director when visiting an assisted living.

[Key Issues in Long-Term Services and Supports Quality](https://www.kff.org/medicaid/issue-brief/key-issues-in-long-term-services-and-supports-quality/) (2017), The Kaiser Family Foundation, Harrington, Charlene , Wiener, Joshua M., Ross, Leslie, and Musumeci, MaryBeth, <https://www.kff.org/medicaid/issue-brief/key-issues-in-long-term-services-and-supports-quality/>. This issue brief discusses key issues related to long-term services and supports (LTSS), highlighting major legislative and policy changes over the last 30 years. The Appendix Tables provide data about LTSS providers and consumers, summarize key federal laws and policies related to quality, and list selected federal quality measures.

[PBS Frontline, Life and Death in Assisted Living: Catherine Hawes: Assisted Living is a “Ticking Time Bomb”](https://www.pbs.org/wgbh/frontline/article/catherine-hawes-assisted-living-is-a-ticking-time-bomb/) (2013), <https://www.pbs.org/wgbh/frontline/article/catherine-hawes-assisted-living-is-a-ticking-time-bomb/>.

[Nursing Counts: Nursing Care in Assisted Living Facilities](https://www.nursingcenter.com/journalarticle?Article_ID=289228&Journal_ID=54030&Issue_ID=289207) (2003), Kovner, Christine and Harrington, Charlene, [https://www.nursingcenter.com/journalarticle?Article\\_ID=289228&Journal\\_ID=54030&Issue\\_ID=289207](https://www.nursingcenter.com/journalarticle?Article_ID=289228&Journal_ID=54030&Issue_ID=289207). This article discusses the role of nursing care in assisted living facilities.

[Encouraging Comfort Care: A Guide for Families of People with Dementia Living in Care Facilities](http://www.alzheimers-illinois.org/pti/comfort_care_guide.asp), Alzheimer’s Association Illinois Chapter, [http://www.alzheimers-illinois.org/pti/comfort\\_care\\_guide.asp](http://www.alzheimers-illinois.org/pti/comfort_care_guide.asp). This guide provide information to help families “ask good questions aimed at obtaining the best care for their loved ones, including a handy checklist of comfort care measures to be discussed with staff members of care facilities.”

For additional resources & information, please visit  
[www.nursinghome411.org](http://www.nursinghome411.org)

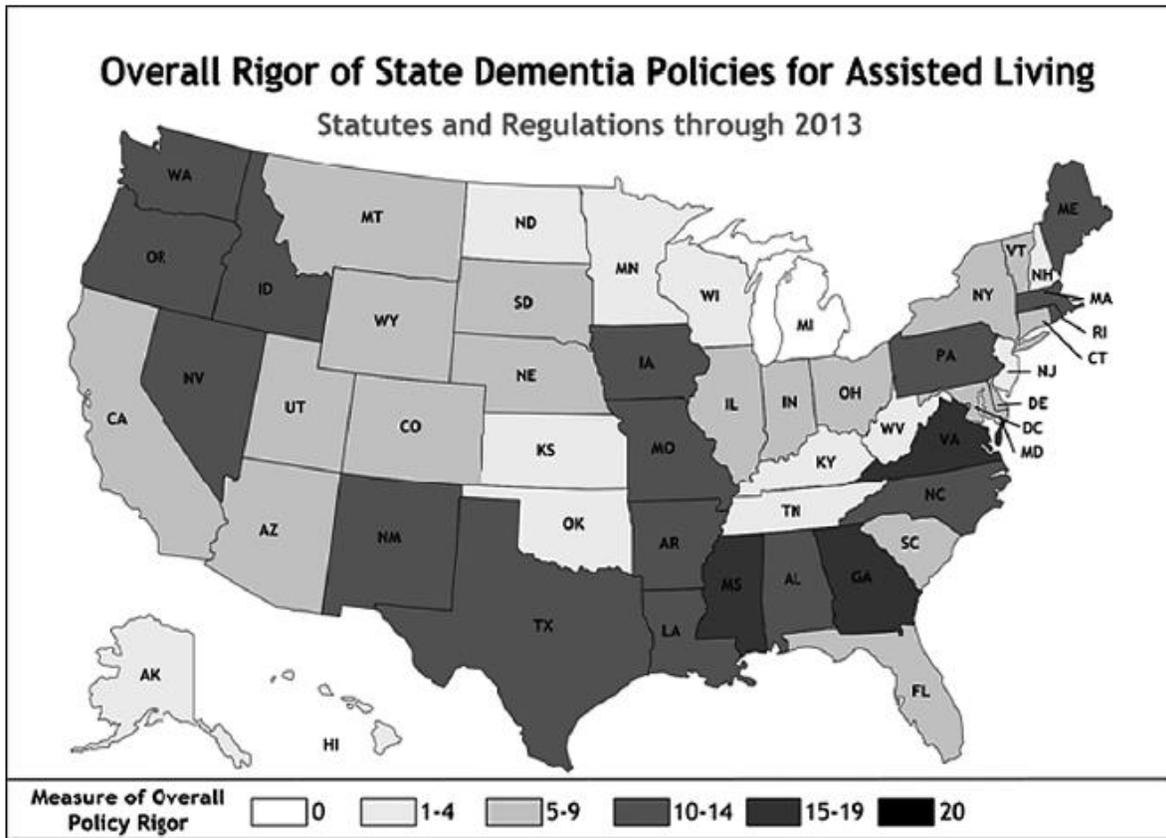
## Appendix 2: Additional Information on Dementia Care

The following tables are excerpted from *Policies to Protect Persons With Dementia in Assisted Living: Déjà Vu All Over Again?*<sup>60</sup>

**Table 1. State Approaches to Regulating Dementia Care Units in Residential Care and Assisted Living Settings**

License or certification required for dementia care units	Agency review required for dementia care units
Alabama	Alaska
Arkansas	California
Connecticut	Illinois
Iowa	Indiana
Mississippi	Kentucky
Montana	Maine
Nebraska	Maryland
Nevada	Massachusetts
New York	Minnesota
North Carolina	New Jersey
Oregon	New Mexico
Rhode Island	Oklahoma
Texas	Pennsylvania
Utah	South Carolina
West Virginia	Vermont
Wyoming	Virginia
	Washington
16	17

<sup>60</sup> Kaskie, B. P., Nattinger, M., & Potter, A. (2015). Policies to Protect Persons With Dementia in Assisted Living: Déjà Vu All Over Again? *The Gerontologist*, 55(2), 199–209, <http://doi.org/10.1093/geront/gnu179>.



### Appendix 3: Additional Information on Staffing

The following tables are from RTI Press’ *State Regulatory Provisions for Residential Care Settings: An Overview of Staffing Requirements*<sup>61</sup>

**Table 3. Direct care worker training requirements, by state**

No training requirement	Training required, but hours are unspecified		1–5 hours	6–10 hours	11+ hours
Mississippi <sup>a</sup>	Alabama	Minnesota	Maryland	California	Idaho
North Dakota <sup>b</sup>	Alaska	Montana	Missouri (RCF)	Connecticut (ALSA)	Louisiana
Pennsylvania (PCH) <sup>b</sup>	Arizona	Nebraska	Nevada	Florida	Massachusetts
Tennessee <sup>b</sup>	Arkansas	New Hampshire		Oklahoma (RCH)	Missouri (ALF)
Vermont (RCH) <sup>b</sup>	Colorado	New Jersey			New Mexico
	Connecticut (RCH)	New York (AH, EHP)			New York (ALR)
	Delaware	Ohio			North Carolina
	District of Columbia	Oklahoma (ALC)			Pennsylvania (ALR)
	Georgia	Oregon			Rhode Island
	Hawaii	South Carolina			Texas
	Illinois	South Dakota			Virginia
	Indiana	Utah			Washington
	Iowa	Vermont (ALR)			
	Kansas	West Virginia			
	Kentucky	Wisconsin			
	Maine	Wyoming			
	Michigan				
<b>Total: 5</b>	<b>Total: 33</b>		<b>Total: 3</b>	<b>Total: 4</b>	<b>Total: 12</b>

AH = adult home; ALC = assisted living center; ALF = assisted living facility; ALR = assisted living residence; ALSA = assisted living service agency; EHP = enriched housing program; PCH = personal care home; RCF = residential care facility; RCH = residential care home.

<sup>a</sup> Training requirement is limited to quarterly training/continuing education requirement.

<sup>b</sup> Training requirement is limited to annual training/continuing education requirement.

Notes: Table reflects orientation/initial training requirements for direct care staff. Some states have different requirements for different residential care licensure categories.

Source: RTI analysis of the *Compendium of Residential Care and Assisted Living Regulations and Policy, 2015 Edition* (Carder, O’Keeffe, & O’Keeffe, 2015).

<sup>61</sup> Carder, P., O’Keeffe, J., O’Keeffe, C., White, E., & Wiener, J. (2016). *State regulatory provisions for residential care settings: An overview of staffing requirements*. (RTI Press Occasional Paper No. OP-0030-1607). Research Triangle Park, NC: RTI Press. DOI: [10.3768/rtipress.2016.op.0030.1607](https://doi.org/10.3768/rtipress.2016.op.0030.1607).

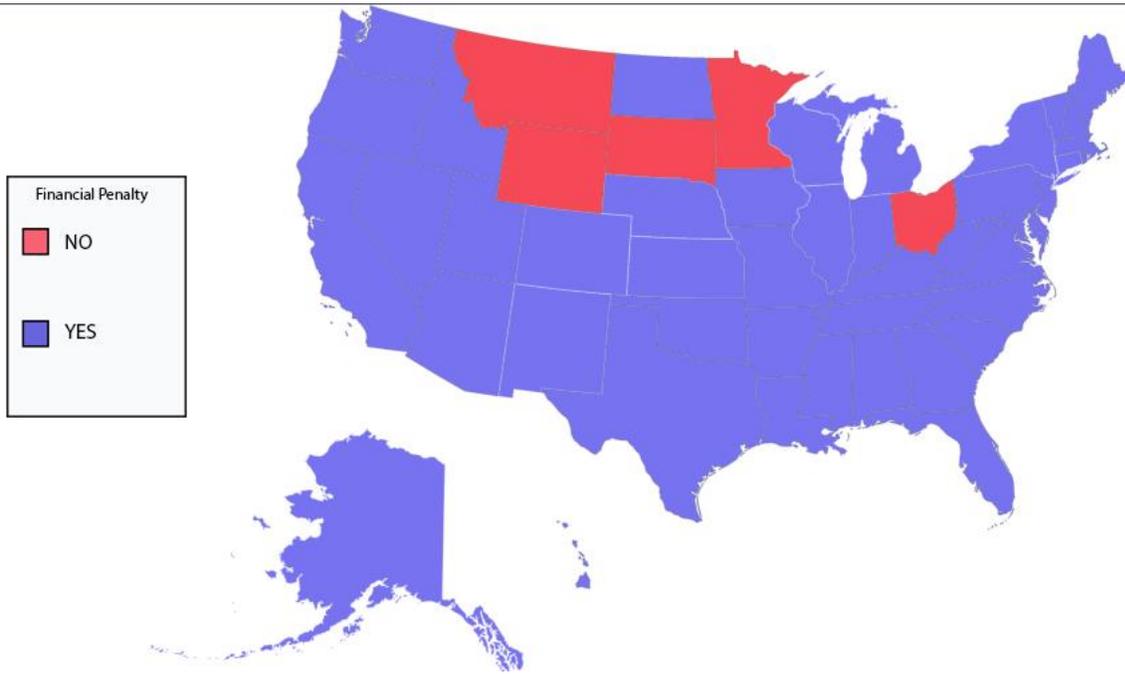
**Table 1. Licensed health care professional staffing requirements, by state**

Licensed health care professional <sup>a</sup> required to be on staff or otherwise available			Licensed health care professional <sup>a</sup> staffing requirement not specified
Alabama	Maryland	Oklahoma	Alaska
Arkansas	Minnesota	Oregon	Arizona
Connecticut	Mississippi	Pennsylvania	California
Delaware	Missouri	South Carolina	Colorado
District of Columbia	Montana	South Dakota	Georgia
Florida	Nebraska	Tennessee	Kentucky
Hawaii	New Hampshire	Utah	Louisiana
Idaho	New Jersey	Vermont	Massachusetts
Illinois	New Mexico	Virginia	Michigan
Indiana	New York	Washington	Nevada
Iowa	North Carolina	West Virginia	Rhode Island
Kansas	North Dakota	Wyoming	Texas
Maine	Ohio		Wisconsin
<b>Total: 38</b>			<b>Total: 13</b>

<sup>a</sup> Licensed nurse (registered nurse, licensed practical nurse, licensed vocational nurse) or other licensed health care professional (physician, physician's assistant).  
 Source: RTI analysis of the *Compendium of Residential Care and Assisted Living Regulation and Policy, 2015 Edition* (Carder, O'Keeffe, & O'Keeffe, 2015).



### Appendix 6: National Chart: State Permitted to Impose Financial Penalties



### Appendix 7: National Chart: Complaints Made Public

