

# **ASSISTED LIVING RESIDENCE LICENSING REGULATIONS**

Agency of Human Services  
Department of Aging and Disabilities  
Division of Licensing and Protection  
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## **I. General Provisions**

1.1 Introduction. These regulations are to be used in conjunction with the Residential Care Home Licensing Regulations, which are designed to protect the welfare and rights of residents and to ensure that residents receive quality care. The regulations also are intended to ensure that homes licensed as assisted living residences promote resident individuality, privacy, dignity, self-direction and active participation in decision-making.

(a) All provisions and requirements of the Residential Care Home Licensing Regulations pertaining to Level III homes shall apply to assisted living residences unless specifically excepted as set forth in section II below.

(b) The intention of the Department of Aging and Disabilities is to assist operators of assisted living residences to attain and maintain compliance with these regulations.

1.2 Statutory Authority. Assisted living residences are subject to the provisions of 33 V.S.A. Chapter 71. The Agency of Human Services has designated the Department of Aging and Disabilities, Division of Licensing and Protection, as the licensing and regulatory agency for assisted living residences as defined at 33 V.S.A. §7102(11).

1.3 Statement of Intent. Upon the effective date of these regulations, all assisted living residences in Vermont will be required to adhere to the regulations as adopted.

1.4 Exception and Severability. If any provision of these regulations, or the application of any provision of these regulations, is determined to be invalid, the determination of invalidity will not affect any other provision of these regulations or the application of any other provision of these regulations.

1.5 Taxes. The applicant or licensee shall be in good standing with the Vermont Department of Taxes, pursuant to 32 V.S.A. §3113. Failure shall result in denial or revocation of license.

1.6 Material Misstatements. Any applicant or licensee who makes a material misstatement relating to the law or to these regulations may be subject to denial of license, monetary fine, suspension and/or revocation of license.

1.7 Appeals. An applicant, licensee or resident aggrieved by a decision of the licensing agency pursuant to these regulations may file a request for a fair hearing with the Human Services Board as provided in 3 V.S.A. §3091.

1.8 License Required. The terms assisted living or assisted living residence or words to that effect may not be used by any facility in its title, brochure, admission agreement or other written or promotional materials unless the facility has a valid license to operate as an assisted living residence issued by the Department of Aging and Disabilities.

## **II. Exceptions**

To obtain and maintain a license to operate an assisted living residence an applicant or licensee must meet all of the requirements of the Residential Care Home Licensing Regulations, with the exception of the following sections of those regulations:

2.1 Eligibility: 5.1 (a) and 5.1(b).

2.2 Admission: 5.2(d).

2.3 Physician Services: 5.8(a).

2.4 Level of Care and Nursing Services: 5.9(a), (b) and (d).

2.5 Residents' Rooms: 9.2(a), (b), (c)(2), (g), (h) and (i). If a unit is rented furnished, however, or is being converted from a Level III unit, there is no exception to the requirements of (.2(c)(2).

2.6 Toilet, Bathing and Lavatory Facilities: 9.3(b)

## **III. Definitions**

3.1 "Aging in place" means to remain in a residence despite physical or mental decline that might occur with aging or with disability, as described in 6.3.

3.2 "Assisted living residence" means a program or facility that combines housing, health and supportive services to support resident independence and aging in place. At a minimum, assisted living residences shall offer, within a homelike setting, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living shall promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity.

3.3 "Lease" means a written agreement between the assisted living residence and a resident regarding the resident's rental of the resident unit. A lease may be required in addition to an admission agreement.

3.4 "Negotiated risk" means a formal, mutually-agreed upon, written understanding that results after balancing a resident's choices and capabilities with the possibility that those choices will place the resident at risk of harm. Negotiated risk does not constitute a waiver of liability.

#### **IV. Variances**

Variances from these regulations may be granted by the licensing agency using the same criteria and procedures as set forth in the Residential Care Home Licensing Regulations, Section III.

#### **V. Licenses**

5.1 The licensing agency shall not issue an assisted living residence license to an applicant unless all of the applicable requirements of the Residential Care Home Licensing Regulations for a Level III home are met.

5.2 The licensing agency shall not issue an assisted living residence license unless all residence units within the facility meet the definition for assisted living residence as set forth above.

#### **VI. Resident Care and Services**

6.1 Eligibility. The licensee may accept and retain any individual 18 years old or older, including those whose needs meet the definition of nursing home level of care if those needs can be met by the assisted living residence, with the following exceptions:

(a) The licensee shall not admit any individual who has a serious, acute illness requiring the medical, surgical or nursing care provided by a general or special hospital; and

(b) The licensee shall not admit any individual who has the following equipment, treatment or care needs: ventilator, respirator, stage III or IV decubitus ulcer, naso-pharangeal, oral or trachial suctioning or two-person assistance to transfer from bed or chair or to ambulate.

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

6.2 Admission. The licensee may require a lease in addition to the written admission agreement required pursuant to the Residential Care Home Licensing Regulations.

6.3 Aging in Place. A licensee shall provide personal care and supportive services, which may include nursing services, to meet the needs and care plans of residents assessed at or below the following levels of need according to the assessment protocol specified by the licensing agency:

(a) An ADL score of 10 or less in the daily activities of eating, transfers, toileting and bed mobility, provided that the mobility, ambulation and transfer needs can be met by one staff person;

(b) A cognitive impairment at a moderate or lesser degree of severity; or

(c) Behavioral symptoms that consistently respond to appropriate intervention.

6.4 Physician Services. Residents who have an identified acute or chronic medical problem or who is deemed to need nursing overview or supervision shall be under the continuing general supervision of a physician of their choosing.

6.5 Involuntary Discharge of Residents. The expectation is that individuals will be permitted to age in place as set forth in 6.3 and not be required to leave an assisted living residence involuntarily. In those instances in which a resident is required to leave, however, the provisions of this section shall supersede the requirements of the Residential Care Home Licensing Regulations, Section 5.3 (a). The licensee shall not initiate a discharge because a resident's choice might pose a risk if the resident is competent and the choice is informed and poses a danger or risk only to the resident. Otherwise, an involuntary discharge of a resident may occur only when:

(a) The resident presents a serious threat to self that cannot be resolved through care planning and the resident is incapable of engaging in a negotiated risk agreement;

(b) The resident presents a serious threat to residents or staff that cannot be managed through interventions, care planning or negotiated risk agreements in the assisted living residence;

(c) A court has ordered the discharge or eviction;

(d) The resident failed to pay rental, service or care charges in accordance with the admission agreement;

(e) The resident refuses to abide by the terms of the admission agreement; or

(f) If the licensee can no longer meet the resident's level of care needs in accordance with 6.3.

6.6 Refusals and Non-Duplication. The licensee shall not provide or arrange any service for a resident that the resident refuses or chooses to obtain from another source.

6.7 Care Plans. The licensee, the resident and/or the resident's legal representative shall work together to develop and maintain a written resident care plan for those residents who require or receive care. The care plan shall describe the assessed needs and choices of the resident and shall support the resident's dignity, privacy, choice, individuality, and independence. The licensee shall review the plan at least annually, and whenever the

resident's condition or circumstances warrant a review, including whenever a resident's decision, behavior or action places the resident or others at risk of harm or the resident is incapable of engaging in a negotiated risk agreement.

6.8 Assessment. The licensee shall submit resident assessment data to the licensing agency on an annual basis or as requested by the licensing agency on the form provided.

6.9 Services. The licensee shall have the capacity to provide the following services:

(a) A daily program of activities and socialization opportunities, including periodic access to community resources; and

(b) Social services, which shall include information, referral and coordination with other appropriate community programs and resources such as hospice, home health, transportation and other services necessary to support the resident who is aging in place.

6.10 Record Checks. The licensee shall require the resident as a condition of occupancy to conduct abuse registry and Vermont Criminal Information Center record checks for personal and health care services providers not employed by a licensed or certified agency.

6.11 Uniform Consumer Disclosure. A licensee shall state in its licensing application and in a uniform consumer disclosure the services it will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the residence, and any physical plant features that vary from the assisted living residence requirements found in Section XI.

(a) The uniform consumer disclosure shall be completed on a form provided by the licensing agency and shall be kept on file by the licensee.

(b) The uniform consumer disclosure shall describe all service packages, tiers, and rates.

(c) The uniform disclosure form shall include a statement that rates are subject to change, including rate changes due to increased care needs, and describe the situations in which the change(s) could occur.

(d) The disclosure shall be provided:

(i) to residents prior to or at admission and at any time it is changed or is requested by the resident; and

(ii) to the public upon request.

(e) The availability of a uniform consumer disclosure shall be noted prominently in all marketing brochures and written materials.

(f) A licensee who has specialized programs such as dementia care shall include a written statement of philosophy and mission and a description of how the assisted living residence can meet the specialized needs of residents in the uniform disclosure form and in the admission agreement.

6.12 Notice of Changes. The licensee shall give each resident and the licensing agency a written ninety-day notice when its services, rates, retention policies or physical plant will change so as to significantly enhance or significantly restrict the potential for aging in place.

6.13 Training. The licensee shall provide training in the philosophy and principles of assisted living to all staff. Staff who have any direct care responsibility shall have training in communications skills specific to persons with Alzheimer's Disease and other types of dementia.

6.14 Resident Records. In addition to those documents required by the Residential Care Home Licensing Regulations, the licensee shall ensure resident records include:

(a) Copies of any negotiated risk agreements and care plans; and

(b) Copies of lease agreements, if applicable and/or required.

6.15 Licensee Records. The licensee shall maintain current records of any contracts and/or subcontracts with outside providers, agencies, suppliers and public programs. Residents shall be given access to such documents and provided a copy upon request.

6.16 Resident Councils. Residents shall have the right to organize and operate resident councils, with staff or manager assistance by resident request only.

## **VII. POLICIES AND PROCEDURES**

7.1 Policies. In addition to those policies required under the Residential Care Home Licensing Regulations, the licensee shall establish policies and procedures regarding:

(a) Unexplained absences of residents;

(b) Behavioral symptoms of the residents, including but not limited to wandering, sexually inappropriate or socially disruptive behaviors, or resistance to care;

(c) Managing residents with declining cognitive status, including incompetence, and setting forth when and how a legal guardian will be obtained;

(d) Negotiated risk agreement process, including the identity of the responsible staff person; and

(e) Use by the residents of the community kitchen, if applicable, as well as other common areas.

7.2 Quality Improvement. The licensee shall develop a quality improvement program that identifies and addresses quality issues. At a minimum, the licensee shall:

(a) Have an internal quality improvement committee that shall:

(i) consist of the director of the assisted living residence, a registered nurse, at least one other direct care staff member, a resident and other representatives as needed to achieve program objectives;

(ii) meet at least quarterly to identify issues with respect to quality improvement, to develop and implement appropriate plans of action and to review and act upon resident satisfaction surveys.

(iii) allow residents to have meaningful opportunities to provide input, to discuss grievances and to review plans of action.

(b) Conduct resident satisfaction surveys at least annually and compile the results of such surveys to identify issues to be addressed by the quality improvement committee.

(c) Maintain confidentiality of individual resident information from satisfaction surveys, input at committee meetings or from the complaint or grievance process, with specific complaints and grievances reviewed only by appropriate staff and outside parties, as requested by the resident. Such information shall be made available to the licensing agency upon request.

## **VIII. AGREEMENTS AND CHARGES**

8.1 The purchase of services in an assisted living residence shall be optional and solely the voluntary choice of a resident. Residents have the right to arrange for third-party services not available through the assisted living residence through a provider of their choice.

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

8.3 The licensee shall not vary charges for the occupancy of the resident unit and for utilities based on the resident's long-term care needs. The licensee may charge different amounts based on the size of the unit, the included amenities and/or any published sliding fee scale or system of housing subsidies administered by the licensee.

8.4 The licensee shall charge for personal care services to meet a resident's health and welfare needs only as bundled daily, weekly or monthly rates. If a licensee has rates that vary according to tiers of services, the rates for the tiers may vary according to the amount and level of services provided to meet the different levels of need of residents. The differences between the tiers of services must be clearly defined and capable of measurement.

8.5 A licensee shall establish a rate to meet the needs and care plans of all residents assessed as below the Nursing Home Level of Care Guidelines, which shall be known as the basic care package. A licensee may establish a rate for independent residents who do not purchase a personal care package, a rate that shall be known as an independent package. For residents who meet nursing home levels of care within the mandatory scope of care for assisted living, the licensee shall have two tiers of services and rates. A licensee who has a policy of retaining residents above the mandatory scope of care for assisted living shall disclose any definitions, tiers and methodologies used to determine the levels of care and bundled rates.

8.6 A licensee may charge on a per service basis only for those services that are not required by Assisted Living Residence Licensing Regulations. Such services may include, but are not limited to, additional transportation and housekeeping services, hair dressing, social outings, daily papers, garage space, and any activities in addition to those daily activities provided to all residents.

## **IX. NEGOTIATED RISK**

9.1 Whenever the licensee determines that a resident's decision, behavior or action places the resident or others at risk of harm, the licensee shall initiate a service negotiation process to address the identified risk and to reach a mutually agreed-upon plan of action.

9.2 The licensee shall initiate the negotiated risk process by notifying the resident and, if applicable, the legal representative, verbally and in writing. The licensee shall also give notice to the resident and legal representative that the state Long Term Care Ombudsman is available to assist in the process.

9.3 If the licensee and the resident reach agreement, the mutually agreed upon plan shall be in writing.

(a) The written plan shall be dated and signed by both parties to the negotiation;

(b) Each party to the negotiation shall receive a copy of the written plan; and

(c) A copy of the plan shall be attached to and incorporated into the resident's care and service plan.

9.4 If the licensee and the resident are not able to reach agreement, the licensee shall notify the state long term care ombudsman if the failure to reach agreement results in a notice of discharge.

9.5 Negotiated risk discussions and the plan shall be resident specific.

## **X. NUTRITION AND FOOD SERVICES**

10.1 The licensee must have the capacity to provide a full meal and snack program. If such services are offered, the programs must meet the requirements of section 7.1 of the Residential Care Home Licensing Regulations. The licensee may allow residents to purchase less than a full meal and snack plan.

## **XI. PHYSICAL PLANT**

11.1 Resident Units. All resident units must be private occupancy unless a resident voluntarily chooses to share the unit.

11.2 At a minimum, resident units shall include the following:

(a) 225 square feet per unit, excluding bathrooms and closets, unless otherwise provided by these regulations.

(b) A private bedroom, private bathroom, living space, kitchen capacity, adequate space for storage, and a lockable door, unless otherwise permitted by these regulations. Studio/efficiency apartments that offer a private bedroom, living space and kitchen capacity in one large room and include a private bathroom shall meet these requirements.

(c) The bathroom shall be a separate room designed to provide privacy and shall be equipped with a toilet, with grab bars, a sink, hot and cold running water, a shower or bathtub, a mirror and towel racks. Showers or bathtubs shall have non-skid surfaces and safety grab bars.

(d) Kitchens shall consist of a food preparation and storage area that includes, at a minimum, a refrigerator with freezer, cabinets, counter space, sink with hot and cold running water, a stove or microwave that can be removed or disconnected, and electric outlets.

(e) Each unit shall provide adequate closet space for clothing and belongings.

(f) All doors in units, including entrance doors, shall be accessible or adaptable for wheelchair use. Entrance doors to units shall have a locking device and shall be equipped with hardware that is accessible.

(g) All unit windows shall be made of clear glass and permit viewing to the outside.

(h) Light switches in the units shall be located at the entry, in the bedroom and in the bathroom to control one or more light fixtures.

(i) Each unit shall have at least one telephone jack.

(j) Each unit shall have individual temperature controls for heating and cooling.

(k) Each unit shall be equipped with an emergency response system that will alert the on-duty staff.

(l) Each unit shall be built in conformance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the equivalent state building code specifications.

### 11.3 Pre-existing structures.

(a) The licensing agency may grant a variance for pre-existing structures that differ from the minimum requirements set forth above. If such a variance is granted, the specifics of the structural limitations and the terms of the variance shall be stated on the license. The licensee shall include the information in the uniform disclosure form.

(b) The licensing agency may grant physical plant variances for pre-existing structures in the following instances:

(i) Resident units that do not meet the requirements for private kitchen space, but the facility has a community kitchen that includes a refrigerator, sink, cabinets for storage, stove or microwave oven, and a food preparation area. A community resident kitchen shall not include the kitchen used by the assisted living residence staff for the preparation of resident or employee meals, or for the storage of goods.

(ii) Resident units in pre-existing structures not previously licensed as residential care homes must have at least 160 square feet of clear living space excluding the bathroom, closet(s), alcoves and vestibules.

(iii) If the pre-existing structure is a licensed residential care home that was in continuous operation as a licensed residential care home prior to July 1998, the resident unit clear living space, excluding the bathroom, closet(s), and alcoves, must be at least 100 square feet.

### 11.4 Common Areas

(a) The assisted living residence shall have at least two common areas for use by all residents. The common areas shall be designed to meet resident needs and shall be accessible for wheelchair use. The common areas shall provide residents with sufficient space for socialization and recreational activities.

(b) At least one common area shall be available for resident use at any time, provided such use does not disturb the health, safety, and well being of other residents.

## 11.5 Other Common Space

- (a) If an assisted living residence has a community kitchen:
  - (i) Residents shall have unlimited access to the kitchen; and
  - (ii) Resident shall have individual space in which to store personal food and supplies.
- (b) Access to private or public outdoor recreation areas shall be available to residents.
- (c) There shall be at least one public restroom in the assisted living residence that meets applicable local, state, and federal accessibility laws and guidelines. It shall be convenient to the common areas.
- (d) The assisted living residence shall have accessible common dining space outside residential units sufficient to accommodate residents.