

## **Summary of Express Terms**

The Assisted Living Reform Act creates several new licensure and certification categories: Assisted Living Residence (ALR), Enhanced ALR and Special Needs ALR. The Act defines “assisted living” and “assisted living residence” as “an entity” which provides or arranges for housing, on-site monitoring and personal care services and/or home care services (either directly or indirectly) in a home-like setting to five or more adult residents unrelated to the assisted living provider. An ALR must also provide daily food service, twenty-four hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. In order to operate as an ALR, an operator must also be certified as an adult home or enriched housing program.

The ALR licensure category is viewed as a basic level of assisted living, but one that differs from the level of care provided by adult homes or enriched housing programs in several significant ways. An additional requirement for ALRs is an individualized service plan (ISP) for each resident. The ISP describes what services will be provided and the identified provider or staff responsible. The ISP must be reviewed and updated every six months as well as whenever a resident has a significant change in needs. In addition, prospective residents, resident and their representatives are entitled to significant residency agreement and disclosure information. Case management and other services and related staff qualification and training requirements will differ as well.

Certification as an Enhanced ALR will allow residents to age in place. This is a major new feature of the Assisted Living Reform Act. Assisted living residences with Enhanced ALR certification may retain residents who exceed the retention standards of adult homes, enriched housing programs or assisted living residences. Enhanced ALRs

cannot admit residents in need of 24-hour skilled nursing care or medical care. A written evaluation from the resident's physician that the resident does not require 24-hour skilled nursing care or medical care is required prior to admission. However, Enhanced ALRs may retain residents in need of 24-hour skilled nursing care or medical care if certain conditions are met as described in this section.

The second certification category for which ALRs may apply is the Special Needs ALR. The Special Needs ALR certification requires that ALRs that advertise or market themselves as serving individuals with special needs, including but not limited to dementia or cognitive impairments, must apply to the New York State Department of Health (the Department) for Special Needs ALR certification. All facilities currently licensed under Article 7 of the Social Services Law that operate dedicated dementia facilities and/or units will be required to apply for this designation. The Department has revised its current policy and procedures for such dementia units.

No adult home, enriched housing program or ALR may advertise or market itself as providing specialized services to individuals with special needs unless and until the residence has been licensed as an ALR and issued a Special Needs assisted living certificate. This approval will be based in part on the submission of a special needs plan which sets forth how the special needs of such residents will be safely and appropriately met at the residence. The plan must include, but need not be limited to, a written description of specialized services, staffing levels, staff education and training, work experience, professional affiliations or special considerations relevant to serving persons with special needs, as well as any environmental modifications that have been made or will be made to protect the health, safety, and welfare of such persons in residence. The

approval of any special needs program will also be based on adherence to any standards developed by the Department to ensure adequate staffing and training necessary to safely meet the needs of the specialized population proposed to be served.

The Department proposes the following rule making for the purpose of providing a regulatory framework for implementation of the Assisted Living Reform Act of 2004.

Section 1001.1 sets out the types of residences to which this regulation applies, as well as what other regulations will apply to assisted living residences.

Section 1001.2 lists the applicable definitions.

Section 1001.3 provides the requirements pertaining to certificates of incorporation and/or articles of organization. Specifically, this section sets forth the requirements for a not-for-profit corporation or business corporation to file or amend certificates of incorporation or for a limited liability company to file or amend articles of organization for the purpose of establishing and operating or fundraising on behalf of any ALR, Enhanced ALR or Special Needs ALR.

Section 1001.4 describes who may be issued operating certificates to operate an ALR, Enhanced ALR or a Special Needs ALR. In addition, this section discusses what must be contained in the respective operating certificates. This section also prohibits the operator from taking certain actions with respect to the operating certificate. Also detailed is what actions must be taken by the operator in the event that the residence ceases operations. Finally, this section provides what authority the operator and the fact that such authority is limited to the operator.

Section 1001.5 enumerates the procedure for and what information must be included in an application for licensure as an ALR and for certification as an Enhanced

ALR or a Special Needs ALR. This section also describes the process that will be followed by the Department when considering applications.

Section 1001.6 provides the general provisions to which all assisted living residences must adhere.

Section 1001.7 discusses the admission and retention standards applicable to assisted living residences. Specifically, this section provides the standards that need to be met at the differing levels of care. This section also lists the differing levels of resident infirmity that would preclude a residence (depending on the type of certificate that the facility is operating under) from admitting and/or retaining such a resident.

Section 1001.8 provides the consumer and resident protections. These specific protections require each residence to provide the residents with a living environment that promotes dignity, autonomy, independence and privacy in the least restrictive and most home like setting. This section provides individual residents' right as well as providing for the support of resident and family organizations. Also enumerated in this section are standards that must be followed when creating and implementing residency agreements.

Section 1001.9 sets forth the requirements of how residents' funds and valuables are to be maintained and protected.

Section 1001.10 lists the services that must be provided by assisted living residences. These services include, but are not limited to the following: monitoring, daily food service, case management service, personal care, health care, medication management. Depending on the operating certificate of the individual residence, the residence may expand the scope of the basic services provided and/or provide additional services.

Section 1001.11 discusses personnel requirements. This section delineates staff training requirements, appropriate tasks for each specific training level and the staffing levels and classifications that must be present at the residence at any given time.

Section 1001.12 proscribes what records and reports must be generated and maintained by the operator.

Section 1001.13 lists the structural and environmental standards that must be met by both existing and newly constructed residences.

Section 1001.14 set forth the requirement that each residence must have disaster and emergency preparedness plans. This section also provides what should be included in such plans and how often such plans should be updated.

Section 1001.15 provides for the inspection and enforcement procedures to which each assisted living residence will be subject, and enumerates the schedule of penalties.

Section 1001.16 details the requirements and procedures to be followed should an operator of a residence contract with a separate entity for the provision of any of the residence's management or operations.

In addition to the sections set forth above, the residence will also be required to comply with any applicable adult care facility regulations found in Title 18 of the New York Code of Rules and Regulations Parts 485, 486, 487 and 488 and any other statutes and regulations required for maintaining a valid operating certificate issued pursuant to Title Two of Article Seven of the Social Services Law, unless superceded by a conflicting provision of the Assisted Living Reform Act, and shall obtain and maintain all other licenses, permits, registrations or other government approvals required in addition to the requirements under Article Seven.