

State Assisted Living Regulatory/Policy Changes in 2012:* **Analysis of NCAL Findings, Published March 2013**

Eighteen states reported making regulatory, statutory, or policy changes impacting assisted living/residential care communities from January 2012 through January 2013. At least nine of these states made major changes, including Colorado, Georgia, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, and Washington. In 2012, states continued developing new models for surveys, expanding disclosure and reporting requirements, addressing life safety and infection control issues, and allowing increased delegation of medication administration to non-nurse staff.

In 2012, New Jersey and Colorado joined the small but growing number of states with innovative survey approaches, developed in part to help better target resources. New Jersey's Department of Health (DOH) collaborated with The Health Care Association of New Jersey Foundation to create a voluntary program called *Advanced Standing*. To receive this distinction, a facility must comply with all applicable regulations as well as submit quality data reaching benchmarks established by a peer review panel. Participating facilities do not receive a routine survey, but any time a facility falls below DOH standards, it can be removed for cause from the program. The state also does follow-up surveys based on a random sample. In January 2013, Colorado began conducting risk-based re-licensure inspections for Assisted Living Residences (ALRs), initially on a pilot basis. Under the new system, ALRs meeting criteria specified in the law will be eligible for an extended survey cycle. In 2012, Michigan also began using a new renewal inspection system.

After creating an additional level of licensure for Assisted Living Communities a year earlier, Georgia updated rules for Personal Care Homes in January 2013, including new requirements for additional staff training, staffing above minimal standards, and a needs assessment upon move-in. Also effective January 2013, New York adopted rules stating that no adult home with a capacity of 80 residents or greater may admit or retain more than 25 percent census of residents with serious mental illness. Several states made changes to policies and rules for care provided to residents receiving Medicaid services, some to accommodate managed care contracting. In 2012, the state of Washington changed its licensure term to "assisted living facility" from the outdated "boarding home." Oregon began requiring facilities to adopt policies for the treatment or referral of acute sexual assault victims.

*** Derived from information collected for the National Center for Assisted Living *Assisted Living State Regulatory Review 2013*, NCAL, Washington, D.C. For additional information, please contact Karl Polzer, NCAL Senior Policy Director, at 202-898-6320 or kpolzer@ncal.org.**

Trends include the following: In 2012, states:

- Added to or changed disclosure or reporting requirements (including CA, FL, OH, OR, WA);
- Changed life safety or physical plant standards (including MO, ND, OR, WV);
- Made major changes to survey procedures (including CO, MI, NJ);
- Addressed TB testing requirements or infection control (including MS, TX);
- Revised or added admission/retention thresholds (including FL, TX);
- Changed rules relating to medication management (including CA, NJ);
- Changed staffing requirements (including GA, OH);
- Changed resident assessment requirements (including GA, OR); and
- Addressed handling residents' personal property or funds (including MO, OR).

2012 State-by-State Highlights

The following state-by-state highlights of assisted living regulatory/statutory and Medicaid policy changes are based on information provided by state officials and NCAL's state affiliates:

California:

Legislation enacted in 2012 impacting Residential Care Facilities for the Elderly (RCFEs) includes: Assembly Bill (AB) 40, AB 2066, Senate Bill (SB) 1329, and SB 345.

AB 40 requires mandated reporters of elder or dependent adult abuse to report specified incidents of physical abuse directly to the California Department of Social Services (CDSS), law enforcement officials, and the State Ombudsman, utilizing the suspected abuse form (SOC 341). This legislation creates four different reporting standards based upon the reporter's analysis of the facts, which includes filing a report within specific time frames and to several different entities. (This bill amends sections 15630 and 15631 of the Welfare and Institutions Code, relating to elder and dependent adult abuse. In addition, it added section 15610.67 to the Welfare and Institutions Code. General California legislative information may be found at: http://www.leginfo.ca.gov/pub/11-2/bill/asm/ab_0001-0050/ab_40_bill_20120927_chaptered.pdf.)

AB 2066 requires the CDSS to establish a closure date of a RCFE of 60 days after the CDSS order of revocation of a license. The CDSS has the authority to reset the date to one sooner than 60 days after revocation if substantive health and/or safety threats develop. The legislation allows a licensee to contract for the services of an unrelated entity to oversee the daily operations of the facility as an interim 60-day co-licensee, as approved by the CDSS Community Care Licensing Division (CCLD). It provides resident safeguards requiring that the licensee provide refunds of paid pre-admission fees. (This bill amends sections 1569.525 and 1569.682 of the Health and Safety Code relating to revocation of licenses. General California legislative information may be found at: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2051-2100/ab_2066_bill_20120927_chaptered.pdf.)

SB 1329 allows RCFEs with 16 or more residents, and other specified entities, to donate unused medication to a prescription drug depository and distribution program providing medication to medically indigent patients free of charge. The bill also expands which pharmacies are eligible to dispense donated medication. (This bill amends Sections 150200, 150201, 150202, 150204, and 150205 of, and adds Section 150202.5 to, the Health and Safety Code, relating to pharmaceuticals. General California legislative information may be found at: http://leginfo.ca.gov/pub/11-12/bill/sen/sb_1301-1350/sb_1329_bill_20120928_chaptered.pdf.)

SB 345 aligns, through amendment and repeal, Welfare and Institutions Code Sections related to the Office of the State Long Term Care Ombudsman and its roles and responsibilities to federal law, the Older Americans Act, Title VII, Chapter 2, Sections 711/712. General legislative information may be found at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_345_bill_20120927_chaptered.html.

The CCLD promulgated regulations, effective Sept. 19, 2012, relating to eviction procedures in RCFEs. (The regulations were the result of SB 781, Chapter 617, Statutes of 2009, effective Jan. 1, 2010. This bill amended the RCFE Act, Health and Safety Code section 1569.683 and Title 22, Division 6, Chapter 8, Residential Care Facilities for the Elderly (RCFE), Section 87224. For more information, see: <http://www.cclld.ca.gov/PG555.htm>.)

Colorado:

On Jan. 1, 2013, the Assisted Living Residence (ALR) program began conducting risk-based re-licensure inspections, initially on a pilot basis. Under the new system resulting from passage of HB12-1294 during the 2012 Colorado legislative session, ALRs meeting the following criteria specified in the law will be eligible for an extended survey cycle: licensed for at least three years, and, within that prior three years, having had no enforcement activity, no pattern of deficient practice, and no significant deficiency cited in response to a complaint that negatively affected the life, health, or safety of residents.

The Board of Health is expected to vote in early 2013 on a proposed rule to require disclosure of whether a residence has 24-hour-awake staff.

Florida:

Policy changes in 2012 include the following:

- Assisted living facilities, hospitals, and nursing homes will be able to provide adult day services at any time during a 24-hour day;
- Several exceptions were made to allow assisted living facilities to use third party referral services and to allow programs that provide rebates for referrals provided by residents;
- Assisted living facilities are now required to notify the state licensing agency within 10 days after the initiation of bankruptcy action, foreclosure, or eviction proceedings concerning the provider in which the controlling interest is a petitioner or defendant; and
- The Medicaid Assisted Living Waiver can now enroll disabled adults 18 to 59 years of age.

Georgia:

In January 2013, the regulations for Personal Care Homes were updated (Chapter 111-8-62). The updated rules include:

- New policy and procedures requirements;
- Additional training for staff;
- Language regarding staffing above minimal standards; and
- A requirement for a needs assessment upon admission.

Indiana:

Assisted living services became available under the state's Medicaid Traumatic Brain Injury Waiver, effective January 2013.

Iowa:

The Home and Community-based Services Elderly Waiver upper payment limit for services increased by 17 percent to \$1,300 per month, effective July 1, 2012.

Michigan:

Beginning Oct. 1, 2012, the Adult Foster Care (AFC) and Homes for the Aged (HFA) licensing division moved to a new renewal inspection model. Renewal inspections are no longer scheduled weeks in advance. A one-day notice is to be given for all AFC renewal inspections. All inspections of a licensed HFA facility are to be unannounced.

Under the new model, the use of interview and observation techniques helps to determine compliance with certain key indicators. The key indicators are rules identified as the leading areas concerning resident quality of care. If observations or interviews trigger any concerns, regulatory staff are to follow up with review of specific issue-related records and interviews. (More information on the renewal inspection process is available at: http://www.michigan.gov/documents/dhs/BCALPUB-339_403035_7.pdf.)

Mississippi:

For employee and patient TB testing, the Interferon Gamma Release Assay blood test was added as an option to TB skin testing in August 2012.

Missouri:

Fire safety standards were revised to include emergency preparedness requirements and update and clarify fire alarm system and sprinkler system requirements.

Standards for resident funds and property were revised to clarify requirements and add requirements for handling residents' personal funds and property.

Assisted living regulations were revised to clarify administrator requirements and update and clarify criminal background check and employee disqualification list requirements.

New Jersey:

In 2012, the New Jersey Department of Health (DOH) collaborated with The Health Care Association of New Jersey Foundation to create a voluntary program titled *Advanced Standing*. To receive the department's distinction of Advanced Standing, a facility must comply with all applicable local, state, and federal regulations as well as submit quality data that reaches benchmarks established by a peer review panel. Once these requirements are satisfactorily met, DOH will make the final determination on *Advanced Standing*. A facility that participates in the *Advanced Standing* program does not receive a routine survey by DOH. However, any time a facility falls below DOH standards, such as poor performance on a complaint investigation, that facility can be removed for cause from the program by DOH. In addition, DOH provides follow-up surveys based on a

random sample of facilities that participate in the program. The program is open to all licensed assisted living residences and comprehensive personal care homes.

The DOH is expanding the role of certified medication aides (CMAs) in the area of injectable medications. Effective January 2013, an assisted living facility may request a waiver from the DOH that will allow the registered professional nurse to delegate to CMAs the administration of injectable medications (in addition to previously approved insulin) via disposable, integrated, mechanical medication delivery devices that are prefilled by the manufacturer, commonly known as “pens.”

As of January 2013, the adoption of a new assisted living disclosure form was awaiting final approval.

On Oct. 3, 2012, the Medicaid Managed Long Term Services and Supports waiver was approved, with amendments by the Centers for Medicare & Medicaid Services. The originally scheduled launch date of January 2013 has been moved to July 2013.

New York:

Adoption of regulatory revisions in January 2013 provides that no adult home with a capacity of 80 residents or greater may admit or retain more than 25 percent census of residents with serious mental illness. Those adult homes with a capacity of 80 or greater and with a census of 20 percent mentally ill will be required to provide a quarterly statistical information report to the Department of Health, and will be referred to as transitional adult homes. Operators of such transitional homes must bring the facility's mental health census to a level under 25 percent of the resident population through the lawful discharge of residents with appropriate community services to alternative community settings.

As part of a shift to Medicaid managed care, changes to the Assisted Living Program (ALP) were adopted in the New York State Budget, effective April 1, 2012, based on recommendations of the state's Medicaid Redesign Team. The changes include the following:

- ALPs are now allowed to contract with other qualified providers for services included in the ALP Medicaid capitated rate;
- ALPs may contract with a number of qualified providers to ensure appropriate service to residents;
- The limitation on the number of contracts an ALP may hold with certified home health agencies (CHHAs) or licensed home care services agencies (LTHHCPs) has been removed;
- ALPs are allowed to conduct initial assessments and reassessments directly or through contract with a CHHA, LTHHCP, or other qualified provider;

- The requirement that ALPs send assessments to the Local Department of Social Services (LDSS) and the requirement that the LDSS prior authorize payment for services has been removed, though the LDSS continues to have a role in the ALP admission process;
- ALPs are to notify the LDSS of new ALP enrollments and the LDSS may conduct post-admission audits to assure that the individual is both Medicaid eligible and appropriately placed in the ALP. ALPs are at financial risk for any individual enrolled who is not found to be appropriately placed or not eligible for Medicaid; and
- The requirement that authorization for up to 6,000 new ALP beds be linked to the decertification of nursing home beds has been removed.

North Dakota:

Effective April 1, 2012, new administrative rules for assisted living facilities:

- Add emergency lighting provisions;
- Require that all assisted living facilities have a written emergency disaster plan; and
- Require that if sprinkler systems are installed, they must meet the National Fire Protection Association 25 Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems.

Ohio:

A five-year review of Ohio's residential care facilities rules was completed in November 2012, and the new rules took effect Jan. 1, 2013. Changes include:

- Clarification of requirements for initial licenses and renewal licenses;
- Collection of additional information regarding the licensed operator of a home;
- Allowing for shared staffing between different homes under certain conditions; and
- Removal of potential limitations on the scope of practice of advanced practice nurses and physician assistants.

Also, some of the disclosure requirements for facilities caring for "special populations" and the requirement to use a prescribed disclosure form were removed.

Oregon:

Effective Sept. 1, 2012, Oregon implemented several residential care and assisted living rule changes including the following:

- New definitions;
- Procedures, including resident housing arrangements, during remodeling in non-emergency situations and during remodeling in emergencies or in the event of permanent closure;
- Notice to the department of bankruptcy or foreclosure;
- For owners serving the Medicaid population, a requirement to report all individuals who own at least five percent of the facility both at initial licensing and renewals;
- Prospective licensees must notify residents in writing 30 days in advance of a change in ownership or management entity;
- Providers must post the most recent re-licensure survey, including all revisits and plans of correction;
- As a result of Senate Bill 557, facilities must adopt policies for the treatment or referral of acute sexual assault victims. Policies should contain: 1) procedures for victim safety; 2) location and contact information for the nearest Sexual Assault Advocacy Agency; and 3) staff education. (See: <http://oregonsatf.org/resources/help-for-survivors/> for more information.);
- Licensees and facility personnel may not spend resident funds without the resident's consent;
- Facilities must evaluate and document a resident's ability to smoke safely and use alcohol or drugs not prescribed by a physician;
- Rules concerning refunds and financial management including addition of a section specific to Medicaid personal incidental funds and removal of the requirement to place funds of more than \$150 in an interest bearing account; and
- Elimination of the requirement for facilities to submit a summary of the emergency preparedness plan to the department annually on July 1.

Pennsylvania:

In 2012, the state Department of Public Welfare transferred responsibility for licensure and enforcement of assisted living residences from the Office of Long Term Living to the Bureau of Human Services Licensing, which also regulates personal care homes.

Texas:

Policy changes implementing 2012 legislation include the following:

- Each facility must have a policy for vaccine preventable diseases based on U.S. Centers for Disease Control and Prevention recommendations.

- Under certain conditions, facilities were given more latitude to provide services beyond those normally included in care plans to residents whose care needs have increased since move in, and to retain residents whose ability to evacuate has decreased, thereby allowing them to remain at the facility.

Washington:

In 2012, the state legislature changed the licensure term from “boarding home” to “assisted living facility.”

The assisted living facility (ALF) regulations were updated to implement bills enacted by the state legislature:

- To clarify background check requirements;
- To clarify that drug crimes disqualifying a person from working in an ALF apply if a person is charged with manufacture or delivery of drugs or intent to manufacture or deliver drugs, but not simple possession of a drug;
- To allow ALFs to provide some services to “nonresident individuals” residing in unlicensed rooms within an ALF; and
- To provide a disclosure statement to “nonresident individuals” upon admission, and when additional services are requested, that resident rights, licensing regulations, and ombudsman jurisdiction do not apply to individuals in nonresident units.

West Virginia:

Under a new state statute, effective Sept. 1, 2012, all assisted living communities with permanently installed, fuel-burning appliances or equipment that emits carbon monoxide as a byproduct of combustion are required to have carbon monoxide detectors. See: <http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=29&art=3§ion=16A>.