

## **State Assisted Living Regulatory/Policy Changes in 2009\*** **Summary of NCAL's Findings, published March 2010**

- Even though the troubled economy slowed down or stopped the development of assisted living regulations in a few states, 2009 from a national perspective witnessed a fairly heavy volume and variety of state assisted living regulatory and policy changes. At least 22 states reported making statutory, regulatory, or policy changes in 2009 impacting assisted living/residential care communities or assisted living Medicaid coverage.
- At least eight states made major statutory or regulatory changes or overhauled sections of their rules. Georgia, New Mexico, and Iowa, for example, created or added to protections for residents with Alzheimer's disease or other dementias. Other states making or implementing major changes include Kansas, Maryland, Tennessee, Virginia, and Wisconsin.
- Focal points of state assisted living policy development in 2009 include disclosure of information; life safety/emergency preparedness; Alzheimer's/dementia standards; staff training; resident assessment/service plans; medication management; move-in/move-out requirements; staffing; background checks, reporting requirements, and resident rights.
- Many states made changes to Medicaid programs covering assisted living services. While several states cut or changed how they calculate rates, a few engineered or planned modest coverage expansions. Oklahoma, for example, launched Medicaid waiver coverage for residents of Assisted Living Centers. Colorado revised its regulations with the intent of making assisted living/alternative care facilities serving the Medicaid population look more home-like and offer residents more freedom and choices. At least two states increased disclosure requirements describing Medicaid coverage.
- Trends include the following: In 2009, states:
  - Added to disclosure requirements (including CA, FL, GA, IA, MD, NJ, NM, TN, WA);
  - Made changes to fire safety, physical safety, or disaster/emergency preparedness standards (including CA, GA, IA, KS, MD, MI, NJ, NM, TX, VA);
  - Increased or changed required staff training (including GA, IA, MD, NM, ND, TX, WA, WI);
  - Created or expanded standards to protect residents with Alzheimer's disease or other dementias (including GA, IA, NM);

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**\* Derived from information collected for the National Center for Assisted Living (NCAL) *Assisted Living State Regulatory Review 2010*, NCAL, Washington, D.C. For additional information, please contact Karl Polzer, NCAL Senior Policy Director, at 202-898-6320 or [kpolzer@ncal.org](mailto:kpolzer@ncal.org).**

- Made changes regarding assisted living Medicaid policy (including CO, MI, MN, NJ, OK, WA);
  - Changed resident assessment and/or service plan requirements (including CO, GA, KS, MD, NM);
  - Changed rules relating to medication management (including CO, KS, VA, WA);
  - Changed move-in/move-out requirements (including CA, IA, TN);
  - Added staffing requirements (including CO, GA, MD, NM, TN);
  - Added to or changed background check requirements (including FL, KS, MD, TX);
  - Made changes to reporting requirements (including CO, FL, GA, VA); and
  - Added rules to protect resident rights (including CO, NM).
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## **2009 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:**

### **Arizona:**

The state legislature changed the licensing fee structure, effective January 1, 2010.

### **California:**

In 2009, California enacted laws that:

- Require licensees of a Residential Care Facility for the Elderly (RCFE) to include specified information in an eviction notice issued to a resident.
- Address fire safety protections. This new law specifies that residents who need assistance in transferring to and from bed (but not assistance with turning or repositioning) shall be allowed to remain or be accepted in facilities that have secured a nonambulatory fire clearance. Those residents who are unable to turn or reposition in bed are considered bedridden and may only be retained in facilities that have secured a bedridden fire clearance. This does not apply to RCFEs that care for temporarily bedridden persons, including residents receiving licensed hospice care.

## **Colorado:**

Colorado's Department of Health Care Policy and Financing made revisions to its Medicaid regulations for assisted living residences, which the agency refers to as *alternative care facilities*. The majority of the changes come with the intent to make assisted living/alternative care facilities look more home-like – an integrated community, with more choice and freedom. They include that:

- The facility has a home-like atmosphere;
- The facility shall foster independence, choice of care, and ability to contribute to the home in meaningful ways, and that individual behaviors of residents shall not negatively impact the harmony of facility;
- Potential residents are assessed by a team and reassessed annually and upon significant change in physical, medical, or mental condition;
- Preadmission assessment includes cooking capacity of residents;
- Residents have unscheduled access to food and food preparation areas if assessed to be capable of cooking;
- Residents have access at all times to nutritious food and beverages;
- Appropriate reading material reflecting the residents' interests and hobbies shall be made available in common areas;
- Residents must agree to live together in the same units and this must be documented;
- A private area for residents to have visitors will be provided if bedrooms are shared;
- Clients and their roommates determined capable to control access to private personal quarters shall be allowed to lock their doors and control access to their quarters;
- Bedroom temperatures shall not exceed 85 degrees;
- Residents have the right to possess and self-administer medications with a physician's written order;
- Medication administration services are included in the reimbursement rate and that residents/families cannot be billed for such services;

- The facility will permanently divide and document the day into two 12-hour blocks, which will be considered daytime and nighttime. Required staffing ratios: at least one staff person to ten residents for daytime hours and one staff for each sixteen residents for nighttime hours.
- The facility must notify the single-entry point case manager within 24 hours of any incident or situation that would be communicated to other interested parties.

**Florida:**

The 2009 Florida Legislature passed SB 1986, which affects assisted living facilities under Chapters 408 and 429, Florida Statutes. The legislation:

- Changed adverse incident reporting requirements. Abuse, neglect, and exploitation are no longer part of the definition of an adverse incident; however, they must still be reported to the Department of Children and Families, as required by law.

Events reported to law enforcement for investigation are considered adverse incidents if they relate to an event over which facility personnel could exercise control rather than as a result of the resident's condition.

Elopement is considered an adverse incident if the elopement places the resident at risk of harm or injury;

- Conformed definitions for classifications of deficiencies to the classifications located in 408.23, Florida Statutes, and expanded the requirement to post information regarding facilities that have been sanctioned or fined for violation of state standards;
- Changed the definition of change of ownership to: An event in which the licensee sells or otherwise transfers its ownership to a different individual or legal entity as evidenced by a change in federal employer identification number, or an event in which 51% or more of the ownership, shares, membership, or controlling interest of a licensee is in any manner transferred or otherwise assigned;
- Required applications to be returned if submitted more than 120 days prior to expiration of the requested effective date; and
- Added additional offenses as disqualifying for persons who require background screening (applying to persons hired after October 1, 2009). A person who served as a controlling interest or is an employee on September 30, 2009 is not required to be rescreened if he or she previously met the background screening requirements. However, if the person has one of the new disqualifying offenses

on his or her record, the person may apply for an exemption from the Agency or the appropriate board prior to September 30, 2009. A listing of these additional disqualifying offenses can be found at the following link:  
[http://www.flsenate.gov/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch0408/SEC809.HTM&Title=-%3E2009-%3ECh0408-%3ESection%20809#0408.809](http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0408/SEC809.HTM&Title=-%3E2009-%3ECh0408-%3ESection%20809#0408.809).

### **Georgia:**

In 2009, the authority for regulating Personal Care Homes moved from the Department of Human Resources Office of Regulatory Services to the Department of Community Health, Healthcare Facility Regulation Division. The Rules and Regulations for Personal Care Homes (Chapter 290-5-35) were repealed and new regulations (Chapter 111-8-62) were adopted restating the previous rules and adding new requirements for homes serving residents with cognitive deficits where residents are at risk of eloping.

Changes in the regulations for Personal Care Homes include the following:

- New requirements for Specialized Memory Care Units or Homes including requirements concerning disclosure of information; physical design, environment, and safety; staffing and initial staff orientation; initial staff training; special admission requirements for unit placement; post-admission assessment; individual service plans; and therapeutic activities.
- New safety requirements for facilities that serve residents who have cognitive deficits that may place them at risk for unsafe wandering behavior, including having safety devices on doors and current pictures of residents on file, and training staff on elopement procedures.
- That the physical examination required for residents and staff may now be provided by a licensed physician, nurse practitioner, or physician's assistant.
- That the TB screening required for residents may now be conducted within 12 months of admission.
- Development of a form required to meet the reporting requirements.

### **Iowa:**

New Iowa administrative rules were adopted, effective January 1, 2010, that:

- Added items that Assisted Living Programs must disclose in occupancy agreements;
- Added conditions to move in/move out requirements that would disqualify a person from residing in a program;

- Added safety requirements relating to alarm systems for programs serving people with dementia;
- Enhanced staff training requirements for dementia-specific programs;
- Established education/training standards for newly hired program managers and delegating nurses; and
- Increased continuing education required for direct care staff in programs serving individuals with dementia.

(See Chapter 67 General Provisions for Assisted Living Programs, Elder Group Homes, and Adult Day Service Programs, and Chapter 69 Assisted Living Program rules.)

### **Kansas:**

Revisions to Assisted Living/Residential Health Care Facility and Adult Care Home regulations that went into effect May 2009:

- Increased licensure fees.
- Added limits to resident liability for services, room, and board.
- Specified that the Negotiated Service Agreement can include provision of licensed home health agency or hospice services.
- Expanded the definition of self-administration of medication.
- Required a licensed nurse to evaluate a resident for ability to self-administer medication.
- Expanded the requirement for a licensed pharmacist to perform a medication regimen review to occur with any significant change in resident's condition as well as quarterly.
- Began requiring proof of education when a resident refuses a necessary service.
- Required facilities to check the Nurse Aide Registry in each state in which an individual is known to have worked.
- Established policies and procedures for protection and safety of electronic records.
- Began requiring education regarding disaster and emergency preparedness to residents on admission and quarterly.

Medicaid reimbursement for services under home and community-based waiver programs for assisted living was cut 10%, effective January 1, 2010.

### **Louisiana:**

Legislation passed during the 2009 Regular Legislative Session (HB 728-Act 381) transferred the licensing and regulation of Adult Residential Care Homes/Facilities

(Assisted Living Facilities, Personal Care Homes, and Shelter Care Homes) from the Department of Social Services to the Department of Health and Hospitals. The transfer will take place in July 2010.

**Maryland:**

- Began implementing new regulations for Maryland assisted living programs that became final December 29, 2008. Areas of significant regulatory change include staffing, background checks for staff (and owners under certain conditions), professional licensure, licensing fees, disclosure of information, facility availability for inspections, dispute resolution, quality assurance, on-site nursing, resident assessment, training, infection control, and emergency planning.
- On October 1, 2009, implemented legislation passed in 2006 requiring assisted living programs providing services to 50 or more individuals to have on premises an emergency back-up generator in working condition and capable of running for 48 hours. Exemptions are allowed for facilities that can demonstrate financial hardship and waivers for facilities connected by a corridor to a facility with a generator.

**Michigan:**

The MI Choice Medicaid Waiver program became available to prospective and current Adult Foster Care and Homes for the Aged residents, effective June 1, 2009. This program supports individuals at risk of nursing home placement or transitioning from a nursing home. In a licensed setting, this program can provide supports and services to an eligible individual that are in addition to the usual and customary care required of a licensed home, but does not provide continuous nursing care.

New fire safety rules were promulgated for Homes for the Aged, effective July 28, 2009.

**Minnesota:**

The Minnesota Department of Human Services developed a Medicaid rate setting tool as a condition of a waiver plan renewal by the Center for Medicare & Medicaid Services effective July 1, 2008 for all counties and tribes to use to address disparity in rates within services across the state by December 2009.

**Nevada:**

- Began enforcing grading system regulations passed in 2005 requiring state regulators to award an alphabet grade to facilities based on their annual survey.

For facilities that earn an A grade, no further action is necessary. Facilities that earn a B can choose to be re-surveyed for a fee to earn an A grade. Facilities earning a C or D must be re-surveyed for a \$500 fee to improve their grade.

### **New Jersey:**

Provisions in three laws enacted in 2009 will impact assisted living:

- Building on existing regulations, one law requires all assisted living facilities to acquire at least one defibrillator, centrally located in the facility, and arrange and pay for staff training in its use and CPR.
- All assisted living facilities that require a one-time security deposit in addition to monthly rental and service charges will have to make sure that the deposit plus interest is refundable to the resident under specified conditions.
- The Department of Health and Senior Services and the Division of Medical Assistance and Health Services are required to distribute to all licensed assisted living facilities an information sheet explaining clinical and financial eligibility in the Medicaid waiver program for assisted living and maintain it on a website. Assisted living facilities will be required to provide this information sheet to all prospective private pay residents and/or the financially responsible party.

Department officials plan to begin developing regulations in 2010 to implement the new requirements.

### **New Mexico:**

Revisions of the regulations that took effect January 15, 2010 changed the licensure term from Adult Residential Care Facility to Assisted Living Facility and include new rules for administrator and staff training, Alzheimer's care, and hospice services. The new rules:

- Require facilities that provide a memory care unit to serve residents with dementia to meet additional requirements relating to care coordination, employee training, individual service plans, assessments and reevaluations, documentation, security, resident rights, disclosure, and staffing.
- Increase administrator and staff training requirements.
- Establish rules for the provision of hospice services.

### **North Carolina:**

- Increased initial licensure and renewal fees.
- Beginning Jan. 1, 2009, requires annual registration of Multi-unit Assisted Housing with Services with a fee of \$350.

- Reorganized the licensure statute, G.S. 131D-2 (but the content remains basically the same).
- Banned smoking inside of licensed assisted living facilities (under a 2007 statutory change).

**North Dakota:**

- As a result of legislation passed in 2009, established education and training requirements for all employees in assisted living facilities and continuing education requirements for assisted living facility administrators.

**Oklahoma:**

- Began Medicaid waiver certification for Assisted Living Centers.

**Oregon:**

- No changes in 2009; however, a workgroup is in the process of revising the state's Alzheimer's Care Unit rules.

**Pennsylvania:**

- No changes in Personal Care Home regulations in 2009. Pennsylvania's assisted living regulations are under development and are anticipated to become effective July 2010.

**South Carolina:**

- No changes in 2009. The Division of Health Licensing is proposing revisions to South Carolina's Regulation 61-84 for submission to the legislature in January 2010. However, any revisions to the regulation, if approved during the legislative session, would not become effective until July 2010.

**Tennessee:**

Tennessee made major revisions to the rules for Assisted Care Living Facilities (ACLFs) in May 2009, marking the first significant changes since the rules initially took effect in 1998. The 2009 revisions include:

- Expansion of information that must be disclosed to residents/legal representatives upon admission;
- Further definition and expansion of the types of medical and personal services that can be provided in ACLFs;
- Further definition of services that can be provided by outside contractors;
- Specification of time frames in which initial and ongoing resident assessments must be done; and
- Requiring ACLFs to employ a qualified dietician (full time, part time, or on a consultant basis).

### **Texas:**

Changes in 2009 include:

- Requiring a new applicant for facility licensure to complete a pre-licensure training course before submitting an application for an initial license.
- New rules that govern criminal convictions barring licensure.
- Changing the licensure period to two years. (However, facilities will continue to be inspected at least annually.)
- Allowing the state agency to grant temporary approval to exceed a facility's licensed capacity when there is an emergency.

### **Virginia:**

- Added requirements for licensure of administrators.
- Added requirements for registration of medication aides.
- Added an allowance for provisional status of medication aides.
- Added reporting requirement for disease outbreaks.
- Added documentation requirement for delegation of resident funds.
- Made other revisions for technical purposes and clarity.

### **Washington:**

- Began requiring boarding homes to fully disclose to residents, orally and in writing prior to admission, the facility's policy on accepting Medicaid as a payment source, effective July 26, 2009. The law requires that the facility policy state, in a language the resident or resident's representative understands, the circumstances under which the facility will provide care to Medicaid eligible residents.

- Began requiring nursing assistants who will be administering insulin through nurse delegation to complete the “Focus on Diabetes” course and pass an exam prior to assuming these duties.

**Wisconsin:**

- Added staff training requirements.
- Updated the regulations for Community Based Residential Facilities, one of the state’s types of assisted living, effective April 1, 2009. This was a major update with consensus on many issues with the Assisted Living Forum as the advisory committee to the rule change. The following memo summarizes the major changes including a series of Webcasts to help facilities transition to the new requirements: [http://dhs.wisconsin.gov/rl\\_DSL/Publications/09-005.htm](http://dhs.wisconsin.gov/rl_DSL/Publications/09-005.htm).