TEXAS

Licensure Terms

Assisted Living Facilities

General Approach

The Texas Department of Aging and Disability Services (DADS) licenses several types of assisted living facilities (ALFs): assisted living apartments (single-occupancy), residential care apartments (double-occupancy), and residential care non-apartments. A person establishing or operating a facility that is not required to be licensed may not use the term "assisted living" in referring to the facility or the services provided. The ALF statute requires careful monitoring to detect and report unlicensed facilities.

A facility's licensure type--A or B--is based on residents' capability to evacuate the facility. Any facility that advertises, markets, or otherwise promotes itself as providing specialized care for persons with Alzheimer's disease or other disorders must be certified as such and have a Type B license.

Adult foster care (AFC) provides a 24-hour living arrangement with supervision in an adult foster home for people who are unable to live independently in their own homes because of physical, mental, or emotional limitations. Providers and residents must live in the same household and share a common living area. With the exception of family members, no more than three adults may live in the foster home unless it is licensed as a Type C ALF, which is a four-bed facility that must have an active contract with the Department to provide AFC services before it can be licensed. A provider wishing to serve more than four individuals must obtain a DADS Type A ALF license. *Separate rules apply to adult foster homes and Type C facilities, which are not included in this profile, but a link to the provisions can found at the end*.

This profile includes summaries of selected regulatory provisions for Type A and Type B ALFs. The complete regulations are online at the links provided at the end.

Definitions

Assisted living facility means an establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor and provides personal care services, supervision or direct administration of medications, and other permitted services.

Resident Agreements

Facilities must have a written admission agreement with each resident that includes information about the services to be provided and their cost.

Disclosure Provisions

The facility must have written policies regarding aging in place, admission criteria, services provided, charges, refunds, the normal 24-hour staffing pattern, residents' responsibilities and privileges, and other rules and regulations. Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party and must also provide a copy of the Resident Bill of Rights.

An ALF that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an ALF does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

If the facility provides services and supplies that could be covered Medicare benefits, the facility must disclose this information to the resident.

Facilities that provide care to residents with Alzheimer's disease or other dementias are required to disclose the services they provide using a DADS disclosure form, which includes the pre-admission and admission processes, discharge and transfer, planning and implementation of care, change in condition issues, staffing and staff training in dementia care, and the physical environment. The facility must give the required DADS disclosure statement to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease or other dementias. The disclosure statement must be updated and submitted to the Department as needed to reflect changes in special services for residents. Prior to admitting a resident to the facility, staff must discuss and explain the information in the disclosure statement with the family or responsible party.

Admission and Retention Policy

In a *Type A* ALF, a resident must be mentally and physically capable of evacuating the facility unassisted in the event of an emergency and capable of following directions, and must not require routine attendance during sleeping hours.

In a *Type B* ALF, a resident may require staff assistance to evacuate the facility, be incapable of following directions under emergency conditions, require attendance

during sleeping hours, and may not be permanently bedfast but may require assistance in transferring to and from bed.

All residents must be appropriate for the facility licensure type when admitted. After admission, if the resident's condition changes, the resident may no longer be appropriate for the facility's license, and if so, the facility is not required to retain them.

The regulations list some general characteristics of residents in an ALF, including residents who: (1) exhibit symptoms of mental or emotional disturbance, but are not considered at risk of imminent harm to self or others; (2) need assistance with mobility, bathing, dressing, and grooming; (3) need reminders to encourage toilet routine and prevent incontinence; (4) need assistance with medication, supervision of self-medication, or administration of medication; or (5) are incontinent without pressure sores.

A facility must not admit or retain a resident whose needs cannot be met by the facility or who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided in the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative.

If the Department or an ALF determines that a resident is inappropriately placed in the facility, or if a resident experiences a change of condition, but continues to meet the facility evacuation criteria, as long as the facility is willing the resident may be retained if certain conditions are met, including: (1) a physician describes the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status, and states that the resident is appropriately placed; and (2) the resident or a legal representative desires retention in the facility.

If the DADS surveyor or an ALF determines that a resident is inappropriately placed because the resident no longer meets the evacuation criteria, a facility may request that the resident remain at the facility by obtaining an evacuation waiver and providing a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, which includes provisions for a sufficient number of trained staff on all shifts to move all residents to a place of safety. The facility must meet the previously listed conditions and submit additional information.

Services

ALFs provide personal care, including assistance with activities of daily living (ADLs); general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the

facility or who needs assistance to manage his or her personal life; and supervision or direct administration of medications. The facility must also provide an activity and/or social program for residents at least weekly.

An ALF may provide skilled nursing services for limited purposes: (1) coordinating resident care with an outside home and community support services agency or health care professional; (2) providing or delegating personal care services and medication administration; (3) assessing residents to determine required services; and (4) delivering, for a period not to exceed 30 days, temporary skilled nursing services for a minor illness, injury or emergency.

Facilities that provide care to residents with Alzheimer's disease or other dementias must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be individualized, based upon the resident assessment, and appropriate for each resident's abilities. Residents must be encouraged, but never forced, to participate in activities. Residents who choose not to participate in a large group activity must be offered at least one small group or one-on-one activity per day. A health care professional may coordinate the provision of services to a resident within the professional's scope of practice authorized by the Texas Health and Safety Code, however, a facility must not provide ongoing services to a resident that are comparable to the services available in a licensed nursing facility.

Service Planning

Within 14 days of admission, the facility must conduct a comprehensive assessment and complete an individualized service plan (ISP). The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility.

Facilities that provide care to residents with Alzheimer's disease or other dementias must establish procedures, such as an application process, interviews, and home visits, to ensure that prospective residents are appropriate and their needs can be met. Within 14 days of admission, the facility must comprehensively assess the resident and develop an ISP. The service plan must address the residents' individual needs, preferences, and strengths and be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning. The service plan must be updated annually and upon a significant change in condition.

Third-Party Providers

A resident may contract with a licensed home and community support services agency or with an independent health professional to have health care services delivered at the facility.

Medication Provisions

Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if they continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained.

Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance. Supervision includes and is limited to: reminders to take medications at the prescribed time, opening containers or packages and replacing lids, pouring prescribed dosage according to the resident's medication profile record, returning medications to the proper locked areas, obtaining medications from a pharmacy, and listing the medication taken on a resident's medication profile record.

Residents who choose not to or cannot self-administer medication must have medication administered by a person who: (1) holds a current license to administer medication; (2) holds a current medication aide permit (this person must function under the direct supervision of a licensed nurse on duty or on call); or (3) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse who has trained them to administer medications or verified their training, according to rules in the state's Nursing Practice Act.

Food Service and Dietary Provisions

Facilities must provide at least three balanced and nutritious meals or the equivalent per day. The meals must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by the Department. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board.

Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the ALF.

Staffing Requirements

Type of Staff. Each facility must have a *manager* who is on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site. An employee competent and

authorized to act in the absence of the manager must be designated in writing. An *attendant* (direct care staff person) must be in the facility at all times when residents are present. Attendants are not precluded from performing other functions as required by the ALF.

Staff Ratios. *No minimum ratios*. A facility must develop and implement staffing policies that require staffing ratios based upon residents' needs as identified in their ISPs. A facility must have sufficient staff to: (1) maintain order, safety, and cleanliness; (2) assist with medication regimens; (3) prepare and serve meals that meet requirements; (4) assist with laundry; (5) ensure that each resident receives the kind and amount of supervision and care required to meet his/her basic needs; and (6) ensure safe evacuation of the facility in the event of an emergency.

In Type A facilities night shift staff in a small facility must be immediately available and in a large facility, they must be immediately available and awake. In Type B facilities, night shift staff must be immediately available and awake, regardless of the number of licensed beds.

Training Requirements

All managers must complete a 24-hour course which must include information on the assisted living standards; resident characteristics (including dementia); resident assessment; skills for working with residents; basic principles of management; food and nutrition services; federal laws, such as the Americans With Disabilities Act (ADA), Civil Rights Act of 1991, the Rehabilitation Act of 1993, Family and Medical Leave Act of 1993, and the Fair Housing Act, with an emphasis on the ADA's accessibility requirements; community resources; ethics; and financial management.

All managers must have 12 hours of annual continuing education in at least two of the following areas: resident and provider rights and responsibilities, abuse/neglect, and confidentiality; principles of management; skills for working with residents, families, and other professional providers; resident characteristics and needs; community resources; accounting and budgeting; basic emergency first-aid; and federal laws as listed above.

All staff must receive 4 hours of orientation before assuming any job responsibilities, covering topics at a minimum: reporting abuse and neglect, confidentiality of resident information, universal precautions, conditions that require notification to the manager, resident rights, and emergency and evacuation procedures.

Attendants (direct care staff) must also complete 16 hours of on-the-job training and supervision on a range of topics, including: (1) providing assistance with ADLs; (2) resident health conditions and how they affect the provision of tasks; (3) safety measures to prevent injury and accidents; (4) emergency first-aid procedures and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status; (5) behavior management, for example,

prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and (6) fall prevention.

Attendants must complete 6 hours of education annually, including 1 hour on fall prevention and 1 hour on behavior management, as described above, and a range of other topics suggested by the regulations, including: (1) promoting resident dignity, independence, individuality, privacy, and choice; (2) resident rights and principles of self-determination; (3) communication techniques for working with residents with hearing, visual, or cognitive impairment; (4) communicating with families and other persons interested in the resident; (5) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care; (6) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke; (7) cardiopulmonary resuscitation; (8) common medications and side effects, including psychotropic medications, when appropriate; (9) understanding mental illness; (10) conflict resolution and de-escalation techniques; and (11) information regarding community resources. Subject matter must address the unique needs of the facility.

Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, on one or more of several suggested topics, including: (1) communication techniques and skills useful when providing geriatric care (e.g., skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse); (2) assessment and interventions related to the common physical and psychological changes of aging for each body system; (3) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders; (4) common emergencies of geriatric residents and how to prevent them (e.g., falls, choking on food or medicines, injuries from restraint use); (5) how to recognize sudden changes in physical condition, such as stroke or heart attack, and obtain emergency treatment; (6) common mental disorders with related nursing implications; and (7) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

Provisions for Apartments and Private Units

The licensing rules do not require private units but some types of facilities provide them. In facilities that do not provide private units, a maximum of four people may share a room, and not more than 50 percent of the beds in a facility may be in rooms with more than two residents. One toilet and one sink are required for every six residents and one tub or shower for every ten residents. A minimum of one toilet, sink, and bathing unit must be provided on each sleeping floor accessible to residents of that floor.

The Medicaid STAR+PLUS home and community-based services (HCBS) waiver program pays for services in three types of settings: single-occupancy assisted living apartments, residential care apartments, and residential care non-apartment settings.

An *assisted living apartment* setting is an apartment for single-occupancy that is a private space with individual living and sleeping areas, a kitchen, a bathroom, and adequate storage space. Double-occupancy units may be provided if requested.

Residential care apartments are units with two bedrooms, each with a single occupant, with a shared kitchen and bathroom. Kitchens must be equipped with a sink, refrigerator, cooking appliance (stove, microwave, built-in surface unit) that can be removed or disconnected, and space for food preparation.

A *residential care non-apartment setting* is defined as a licensed ALF with 16 or fewer beds, with living units that do not meet the definition of either an assisted living apartment or a residential care apartment. Most have dual-occupancy rooms but some have rooms with up to four residents.

Provisions for Serving Persons with Dementia

Dementia Care Staff. Facilities must have a *manager* or *supervisor*. Facilities with 17 or more residents must have an *activity director* 20 hours a week. Smaller facilities may designate a person to plan and implement activities.

A facility must employ sufficient staff to provide services for and meet the needs of its residents with dementia. In large facilities or units with 17 or more residents, two staff members must be immediately available whenever residents are present.

Dementia Staff Training. All staff in Alzheimer's facilities must receive 4 hours of dementia-specific orientation prior to assuming job responsibilities, providing basic information about the causes, progression, and management of dementia.

Direct care staff must receive 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must cover providing assistance with ADLs; emergency and evacuation procedures specific to the dementia population; behavior management, including prevention of aggressive behavior and de-escalation techniques; and fall prevention.

Direct care staff must complete12 hours annually of in-service, competency-based training regarding Alzheimer's disease, 1 hour of which must address behavior management, as described above. Additional suggested topics include: (1) assessing resident capabilities and developing and implementing service plans; (2) promoting resident dignity, independence, individuality, privacy and choice; (3) planning and facilitating activities appropriate for the dementia resident; (4) communicating with families and other persons interested in the resident; (5) resident rights and principles of

self-determination; (6) care of elderly persons with physical, cognitive, behavioral and social disabilities; (7) medical and social needs of the residents; (8) common psychotropic medications and side effects; and (9) local community resources.

Managers or supervisors and activity directors or their designees must annually complete 6 hours of continuing education regarding dementia care.

Dementia Facility Requirements. A monitoring station must be provided within the dementia care unit as well as access to at least two approved exits remote from each other. The outdoor area of at least 800 square feet must be provided in at least one contiguous space. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility. Locking devices may be used on control doors provided criteria specifically stated in the rules are met for their use.

Background Checks

An ALF must keep current and complete personnel records on facility employees for review by DADS staff, including documentation that the facility performed a criminal history check (offenses which preclude employment are listed in statute), an annual employee misconduct registry check, and an annual nurse aide registry check.

Inspection and Monitoring

To be licensed, a facility must pass an on-site life safety code inspection and a separate on-site health inspection. Licenses are renewed every 2 years, for which an on-site inspection is required, which must include observation of the care of a resident.

The Department developed a training program to provide specialized training to DADS employees who inspect ALFs. The training emphasizes the distinction between an ALF and a nursing facility.

Public Financing

A Medicaid 1115 demonstration managed care waiver program--called STAR+PLUS--which includes the STAR+PLUS HCBS waiver program, covers services in licensed ALFs (and AFC homes) that contract with the resident's managed care organization to provide the HCBS waiver services. Under the waiver program, facilities may contract to provide services in two distinct types of living arrangements: assisted living apartments and assisted living non-apartment settings. In addition, the Medicaid Community-Based Alternatives 1915(c) Waiver program pays for assisted living and AFC services, although not all ALFs offer waiver services.

Room and Board Policy

Providers may not charge Medicaid waiver program participants more for room and board than the federal Supplemental Security Income (SSI) benefit of $733 (in 2015) minus a personal needs allowance of $85. The state does not provide a supplement for SSI recipients in ALFs.

Family supplementation is allowed for amenities not included in the room and board rate.

Location of Licensing, Certification, or Other Requirements

Texas Statutes, Health and Safety Code, Title 4, Subtitle B, Chapter 247: Assisted Living Facilities. *The chapter is cited as the Assisted Living Facility Licensing Act*.
http://www.statutes.legis.state.tx.us/SOTWDocs/HS/htm/HS.247.htm

Texas Administrative Code, Title 40, Part 1, Chapter 92: Licensing Standards for Assisted Living Facilities.
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=1&ch=92

Texas Administrative Code, Title 40, Part 1, Chapter 48, Subchapter K: Minimum Standards for Adult Foster Care.
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=1&ch=48&sch=K&rl=Y

Texas Department of Aging and Disability Services Website: Adult Foster Care.
http://www.dads.state.tx.us/services/faqs-fact/afc.html

Texas Department of Aging and Disability Services Website: How to Become an Adult Foster Care Provider with links to regulations.
http://www.dads.state.tx.us/providers/afc/howto.html

Texas Health and Human Services Commission, STAR+PLUS Handbook Revision: 14-3. [September 2, 2014]
http://www.dads.state.tx.us/handbooks/sph/1000/1000.htm#sec1143.2

Information Sources

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Regulatory Services
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Center for Policy and Innovation
Department of Aging and Disability Services

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Medicaid/CHIP Program Operations
Texas Health and Human Services Commission

COMPENDIUM OF RESIDENTIAL CARE AND ASSISTED LIVING REGULATIONS AND POLICY: 2015 EDITION

Files Available for This Report

FULL REPORT

Executive Summary	http://aspe.hhs.gov/execsum/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-executive-summary
HTML	http://aspe.hhs.gov/basic-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition
PDF	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition

SEPARATE STATE PROFILES

[***NOTE***: These profiles are available in the full HTML and PDF versions, as well as each state available as a separate PDF listed below.]

Alabama	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-alabama-profile
Alaska	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-alaska-profile
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Ohio	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-ohio-profile
Oklahoma	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-oklahoma-profile
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Rhode Island	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-rhode-island-profile
South Carolina	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-south-carolina-profile
South Dakota	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition-south-dakota-profile
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