



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

March 29, 2019

Dear Interested Party:

New York State Social Services Law (SSL) §461-m(i) authorizes the Department to develop a public need methodology for the approval of Assisted Living Programs (ALPs) effective April 1, 2023. The new public need methodology will consider regional occupancy rates of both adult care facilities and ALPs and the extent to which the ALP will serve individuals receiving Medicaid benefits, but will also serve to ensure an adequate supply of ALP slots are available and accessible.

The purpose of this Request for Information (RFI) is to gather input for the development of a public need methodology to meet the criteria of SSL §461-m(i). The RFI seeks recommendations for planning area designations, factors to include in the methodology, exceptions to the methodology, and any additional requirements or priority considerations to be included.

Please submit comments and recommendations to [ALPinitiative@health.ny.gov](mailto:ALPinitiative@health.ny.gov) no later than **COB May 1, 2019**.

Sincerely,

Valerie A. Deetz, Director  
Division of Adult Care Facilities  
and Assisted Living Surveillance

Enclosure

## **Assisted Living Program (ALP) Request for Information**

### **Purpose:**

The purpose of this Request for Information (RFI) is to gather input for the development of a public need methodology for Assisted Living Programs (ALPs) pursuant to New York State Social Services Law (SSL) §461-m(i). The methodology should factor the regional occupancy rates for adult care facilities and ALPs, and the extent to which the ALP will serve those individuals receiving Medicaid-funded non-residential services. The methodology will be utilized in the evaluation of applications involving the certification of an ALP. This RFI seeks recommendations for planning area designations, factors to consider in the methodology, exceptions to the methodology, and additional requirements or priority considerations. Healthcare providers, administrators, trade associations, and the general public are encouraged to submit responsive information.

### **Background:**

The ALP, regulated at 18 NYCRR §494 and §505.35, provides long-term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services to five (5) or more eligible adults unrelated to the operator. The ALP bundled care package was adopted into Law by Chapter 165 of the Laws of 1991 as a cost-effective alternative residential option to meet the needs of a growing elderly population. Effectively, the ALP combines the residential services of an enriched housing program or adult home with the home care services of a licensed home care services agency (LHCSA) or certified home health agency (CHHA).

To operate, the ALP must be a non-public facility, execute a contract with the local social services district to establish the role of the ALP in the provision of home care services, receive a base license as an enriched housing program or adult home, and establish licensure as a LHCSA, CHHA or Long Term Home Health Care Program (LTHHCP) having identical ownership as the adult home or enriched housing program. The ALP provides the required personal care services, and establishes contract(s) with either a CHHA or LTHHCP to provide required nursing care. Currently, there are 148 licensed ALP operations with 12,241 ALP slots in New York State.

Applications for ALP certification are submitted to the Department of Health (Department) historically in response to Department-generated solicitations that are authorized pursuant to SSL. With the promulgation of SSL §461-m(i), the Department shall, beginning April 1, 2023, approve additional ALP beds on a case-by-case basis whenever the Department is satisfied that public need exists at the time and place and under the circumstances proposed by the applicant.

Thus, this law provides the Department the authority to develop a proactive, purposeful and thoughtful need methodology for the certification of ALP beds. The need methodology developed in response to this RFI will be outlined in regulation, including any agreed upon exceptions or other special considerations.

### **Information Request:**

The Department is seeking information from healthcare providers, administrators, industry leads, advocacy groups, and the general public. Please review the questionnaire and include responses and recommendations. Respondents are asked to use the template provided and to submit their responses in Microsoft Word (Arial, 11 font).

Please note, this RFI is for planning purposes only and should not be interpreted as a solicitation for applications or obligations on the part of the Department. The Department will not pay for the preparation of any information submitted or for use of that information.

## **Assisted Living Program (ALP) Request for Information**

The Department will use at its discretion information submitted in response to this RFI and will not provide formal comments or responses to a responder's submission. The information provided will be analyzed and may appear in future publicly accessible reports. Accordingly, no proprietary, classified, confidential, or sensitive information should be included in your response. Further, respondents are advised that the Department is under no obligation to acknowledge receipt of information or to provide feedback to respondents with respect to any of the information submitted. The Department reserves the right to use any non-proprietary technical information in any resultant solicitation(s).

Please send responses and recommendations to [ALPinitiative@health.ny.gov](mailto:ALPinitiative@health.ny.gov) with the subject line "ALP Need Methodology." Responses are due by **COB May 1, 2019**. Information in addition to the prescribed questions is welcome.

Your time, input, and efforts are greatly appreciated.

## **Assisted Living Program (ALP) Public Need Methodology Questionnaire**

1. Please provide your contact information, including the name of your organization (if applicable), name of contact person, telephone number, and email address.
2. How should ALP planning areas be designated and what factors should be considered? Planning areas generally include one county or two or more contiguous counties. Factors to consider may include, but are not limited to, provider travel patterns including commute time, the availability of public transit, and the availability of existing service providers.
3. What factors should be considered when determining the need for ALPs? Factors may include, but are not limited to, population estimates and demographics, including estimates of the potential ALP participants to be served in each county or designated area, disease and disability prevalence, as well as capacity among existing ALP providers. Please be specific in your response (i.e., include specific demographic information or disease prevalence rates to consider, if appropriate).
4. What type and amount of requisite experience should be required of an ALP operator?
5. What quality measures should be considered when reviewing ALP applications for licensure and/or change of ownership or change of operator?
6. Should the number of ALP beds or ALP providers be capped in any single county or planning area? If yes, what should be considered in the determination of a cap?
7. Should there be exceptions to the need methodology? If so, identify those exceptions and discuss why the need methodology should not apply.
8. Under what conditions would adjustments to the need methodology within a planning area be acceptable?
9. What additional requirements, if any, should be included in ALP applications for initial licensure?
10. What special considerations, if any, should be prioritized when reviewing ALP applications for initial licensure? For example, special considerations may be given to applicants who provide independent living skills training for residents.
11. Should initial applications for licensure be limited to a specific capacity and/or type until the operator demonstrates a competency and compliance over a designated period of time, (e.g. 1-2 years)?
12. Should specialty populations be considered as part of a need methodology (e.g., dementia, traumatic brain injured individuals, etc.)? If so, how?
13. Should a need methodology consider or eliminate from its calculation those ALPs that are proposing to provide only the statutorily-required services? Why or why not?

### **Assisted Living Program (ALP) Request for Information**

14. Should the availability of appropriate staffing for a planning region be considered in public need? If so, how?
15. Should the need methodology regulations apply to change of operator applications? If so, how?
16. What is an appropriate frequency of updating the need calculation?
17. What factors, if any, should be considered for operators of existing ALP beds when requesting increased capacity (e.g., occupancy rates over time, quality)?

Please include any additional comments or recommendations, not to exceed 250 words for the additional comments in this section.