

Assisted Living Program (ALP)
Questions and Answers

10/04/94

This is the third set of questions and answers developed by the Department in response to frequently asked questions pertaining to the ALP. The two earlier sets were dated October 15, 1992, and April 26, 1994. We encourage you to continue to identify issues and to ask questions about the ALP. The questions have informed and supported this implementation process and will contribute to the effective operation of the ALP. General ALP questions may be referred to the Office of Housing and Adult Services (OHAS) at (518) 432-2991. Additional questions related specifically to a Certified Home Health Agency (CHHA), a Licensed Home Care Services Agency (LHCSA) or a Long Term Home Health Care Program (LTHHCP) may be referred to the Department of Health's (DOH) Bureau of Home Health Care Services at (518) 473-6473. Additional questions pertaining to Medical Assistance (MA) may be referred to the Department's Division of Health and Long Term Care (DHLTC) at (518) 473-5563 or 473-5569.

1. Q. What happens when an ALP has not met the percentage of public pay residents committed to on the ALP application?
 - A. As a condition of the operating certificate, the commitment to serve public pay residents will be reviewed upon renewal or, in the event of substantial failure to conform to the conditions, as the basis for enforcement action, such as suspension or limitation of the operating certificate or rescission of the ALP approval.

2. Q. Is an ALP eligible to participate in the retention standards waiver program?
 - A. Yes. If the adult care facility has non-ALP beds, an operator may apply for a retention standards waiver for some of the non-ALP beds. There is no need, however, for the operator of an ALP to apply for a retention standards waiver if all facility beds are approved for the ALP.

3. Q. What are the reasons that an operator may terminate an ALP resident's admission agreement?
 - A. An ALP resident's admission agreement must be terminated according to 461-g and h of the Social Services Law and in 18 NYCRR Sections 487.5(f)(14) and 488.5(e)(3) of the Department's regulations.

4. Q. Will ALPs be cited on a Report of Inspection by DSS inspectors for violations of the Department of Health (DOH) regulations?
 - A. During facility inspections, DSS inspectors will review all DSS regulations including those that overlap with DOH regulations. If

violations are found in these overlapping areas, the Reports of Inspections will cite the DSS regulations. Survey reports issued by the DOH reference deficiencies in DOH regulations.

5. Q. Do separate files or more than one copy of records, such as resident rights, admission agreements, health care proxy statements, assessment forms, etc., have to be maintained by the ALP and the CHHA or the LTHHCP (if not part of the ALP)?
 - A. The facility must maintain all ALP records on-site unless they have received a waiver from the Department. If the ALP contracts with a community based home care agency for services, that agency may want or need to maintain copies of specific records in addition to those maintained by the ALP. It may be appropriate for the contract between the ALP and the agency to address specifics pertaining to record keeping, such as, what records need to be maintained by each contracting party, where they will be maintained and who will obtain the records.

6. Q. If the needs of a Medical Assistance (MA) eligible resident increase, necessitating an increase in the cost of care but the resident's Resource Utilization Group (RUG) category doesn't change, may the operator bill MA for the increased cost of care or discharge the resident if there is no MA reimbursement for the extra costs?
 - A. No, the operator may neither bill MA for an increase in cost of care within a RUG category nor discharge a resident because the cost of care, unrelated to a change in RUG category, exceeds the amount of the capitated payment.

7. Q. What is meant by an "MA spenddown"?
 - A. An "MA spenddown" refers to a situation where an individual has net monthly income over the MA eligibility standard. If the individual is an ALP resident, his/her monthly spenddown amount is any income over the Supplemental Security Income (SSI) benefit level for a congregate care Level II facility. Once an individual has incurred medical bills (paid or unpaid) that equal the amount of his/her spenddown, MA can pay for all other eligible outpatient services for that month. In some districts, individuals may become eligible for MA by turning over their excess income directly to the district.

8. Q. Will payments to an ALP by a third party, e.g., a family member or friend, affect the eligibility status of an individual for MA or SSI?
 - A. For MA only eligibility purposes, any third party payments made directly to an ALP by anyone other than a legally responsible relative are not considered to be income of the MA applicant/recipient. Therefore, such payments will not affect the individual's MA eligibility standard. Any third party payments made on behalf of an SSI recipient would be reviewed by the Social Security Administration and their impact on SSI or MA eligibility determined by the application of the rules governing such payments.

9. Q. Will MA payments to ALPs be reduced through Medicare Maximization requirements?

A. Since the ALP is a new program, unlike any other MA funded home care program presently existing in New York State, the Department believes that only after sufficient experience with the program can a policy regarding Medicare Maximization be established. Consequently, at this time there will be no reduction in the daily rate provided to the ALP as a result of a CHHA's or LTHHCP's receipt of Medicare payment for home health services delivered to a MA recipient in an ALP. These programs may maximize Medicare benefits, as appropriate.

We intend to review the Medicare Maximization issue, however, in the future. At that time, we may request information from ALP operators and home care operators to assist in making a policy decision.

A number of questions pertain to staff responsibilities, qualifications and appropriate tasks. All references to ALP staff who are personal care aides (PCAs) or home health aides (HHAs) refer to "qualified" aides, i.e., they have successfully completed the applicable State approved training program.

There are several documents that list the tasks able to be performed by PCAs and HHAs. The Department's Local Commissioners Memorandum, 92 LCM-70, "Personal Care Aide Scope of Practice" April 24, 1992, (92 LCM-70) lists tasks able to be performed by PCAs. Questions pertaining to PCA tasks should be referred to the Division of Health and Long Term Care (DHLTC) at (518) 474-5343 or 473-5505.

Tasks able to be performed by HHAs are listed in the DOH Memorandum 92-24, "Home Health Aide Scope of Tasks" August 19, 1992, (DOH Memorandum 92-24). Questions pertaining to HHA tasks should be referred to the DOH's appropriate area office or Bureau of Home Health Care Services at (518) 473-6473.

To obtain copies of the above referenced publications, call the Office of Housing and Adult Services at (518) 432-2991.

10. Q. Who is responsible for the supervision of aides in an ALP that is comprised of an adult care facility (ACF) and a licensed home care services agency (LHCSA) - a registered professional nurse from the CHHA, the LTHHCP or the LHCSA?

A. In an ALP that is an ACF/LHCSA, a registered nurse from the LHCSA is responsible for the supervision of HHAs and PCAs. If home health aide services are provided by a CHHA as part of contracted services, however, supervision of the HHA is the responsibility of the CHHA nurse. Nurses from a CHHA or a LTHHCP are responsible for conducting resident assessments and providing nursing services on a scheduled basis.

11. Q. What staff may be assigned duties, other than routine ones, during an emergency, disaster or evacuation situation in an ALP?

A. At the time of an emergency, disaster or evacuation situation, ALP staff must assume the duties designated in the ALP's approved emergency and disaster plan and may be assigned duties other than routine ones. Additionally, the operator may rely on any non-ALP staff who have been trained and assigned duties to be carried out during one of these situations and who are approved on the emergency and disaster plan. For example, the operator of an ALP located on a multi-level facility campus may rely on non-ALP staff from another part of the campus to assist in an emergency if this is approved on the facility's emergency and disaster plan.

In accordance with the requirements of 18 NYCRR 487.12 (a)(b) and 488.12 (a)-(c), any person responsible for directing emergency actions and assigning specific tasks to ALP personnel should be designated on the emergency and disaster plan.

12. Q. Are there requirements for measles (Rubeola) immunization for ALP employees?

A. Although LHCSA staff are not currently required to have documentation of measles immunization, DOH regulations 10 NYCRR 763.13(c)(2)(ii) for CHHAs and LTHHCPs do require this documentation for direct care staff, i.e., home health and personal care aides. Records for these employees must contain a certificate of immunization against measles for all personnel born on or after January 1, 1957, which means:

i) a document prepared by a physician, physician's assistant, specialist's assistant, nurse practitioner or a laboratory possessing a laboratory permit issued pursuant to Part 58 of Title 10 NYCRR demonstrating serologic evidence of measles antibodies, or

ii) a document indicating two doses of live virus measles vaccine were administered with the first dose administered on or after the age of 12 months and the second dose administered more than 30 days after the first dose but after 15 months of age showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization, or

iii) a document, prepared by the physician, physician's/specialist's assistant or nurse practitioner who diagnosed the person's measles, indicating a diagnosis of the person as having had measles disease, or

iv) a copy of the document described in the above paragraphs (i), (ii) or (iii) which comes from a previous employer or the school which the person attended as a student.

The DOH has under consideration the same regulatory requirements for LHCSAs as does the Department for adult care facilities. ALPs will be notified if such requirements become mandatory.

13. Q. Is the training to become a PCA or HHA sufficient to satisfy the requirement that an individual currently qualified by a recognized organization to administer basic first aid must be on duty and on site at all times?
- A. No; the training to become qualified as a PCA or HHA does not include all the training required to be qualified in first aid. If PCAs or HHAs are designated as the staff on duty and on site to administer basic first aid, they must currently be qualified in basic first aid by a recognized organization.
14. Q. Are residents who have needs such as tube feedings or suctioning appropriate for an ALP?
- A. Each applicant's or resident's needs must be evaluated individually. Only those with stable medical conditions whose needs can be met and do not exceed the admission/retention standards, are eligible for placement in an ALP. Generally, as long as the plan of care allows for the scheduling of the services required to meet the needs of these individuals, they are appropriate for care in an ALP. If the service required, such as tube feeding, can be planned for and provided by staff qualified to do so, then it is appropriate to be provided in an ALP. The need for suctioning cannot be scheduled and must be provided on demand. Therefore, it could not appropriately be provided in an ALP. (See DOH Memorandum 92-24, August 19, 1992 for tasks able to be performed by HHAs.)
15. Q. How often must Certified Home Health Agencies (CHHAs) and Long Term Home Health Care Programs (LTHHCPs) obtain the recertification of physicians' orders for home care services for ALP residents?
- A. Physicians' orders for home care services must be recertified every 62 days. (This requirement is not to be confused with the regulations stating that residents must be reevaluated within 45 days of admission, as frequently as required to respond to changes in the resident's condition and to ensure immediate access to necessary and appropriate services by the resident, but in no event less frequently than once every six months.)
16. Q. What are the qualifications of the person responsible for the direction and supervision of patient care services of the LHCSA?
- A. A LHCSA is required to employ a registered nurse to be responsible for the direction and supervision of patient care services.