

DIVISION OF ADULT SERVICES

ADULT CARE FACILITY INFORMATIONAL LETTER NO. 10-92

OCTOBER 15, 1992

To: Operators of Adult Homes and Enriched Housing Programs

Subject: Information regarding the Assisted Living Program

Contact

Person: Frank Rose or Robert Kelliher, 1-(800) 342-3715, extensions 432-2988 or 432-2991, respectively.

I. PURPOSE

To inform operators of Adult Homes and Enriched Housing Programs of answers to questions asked during the provision of on-going technical assistance and at recent regional Assisted Living Program (ALP) sessions.

II. BACKGROUND

Chapter 165 of the Laws of 1991 amended the Public Health Law and Social Services Law to provide for the establishment of an ALP, including the regulatory requirements and standards for its operation. In early October 1991, the Departments of Health (DOH) and Social Services (DSS) sent a request for letters of interest in the ALP to adult care facilities, home care providers, hospitals, nursing facilities, local social services districts and other individuals and organizations which had requested further information. Approximately 200 letters of interest were received. Interagency work resulted in the development of proposed regulations and a joint application which allows the applicant to complete and file a single application for ALP approval including the residential and licensed home care service agency components.

The proposed DSS regulations were published in the State Register, initiating the public comment period which ends on October 19, 1992. By early August, an ALP application package consisting of a cover letter, a program description, an application process summary, an application, the proposed DSS and DOH regulations and existing regulations for adult homes and enriched housing programs was developed. These packages were mailed to between 350-400 individuals, agencies, local social services districts and other organizations that had expressed interest. An application return date was set for October 31, 1992.

ALP technical assistance sessions were conducted around the state. Both DOH and DSS continue to provide assistance on request.

DATE AND TIME OF MEETING: 10-10-82

III. RECOMMENDED ACTION

This information may assist in understanding ALP and in the development of an ALP application. Please note that the DSS ALP regulations are still in the public clearance process and neither they nor the related DOH regulations are final. Applicants will be provided the opportunity to modify their submittals if necessitated by changes to the proposed regulations.

FOR MORE INFORMATION CONTACT: Frank Rose or Robert Halligan, 1-800-342-7115, ext. 432-1234 or 432-3041, respectively.

1. PURPOSE

To inform operators of Adult Homes and Licensed Nursing Programs of changes to regulations and to provide technical assistance and to conduct regional Assisted Living Program (ALP) sessions.

II. BACKGROUND

/s/ William E. Gould

General Act of the year of 1981 amended the Public Health Law and Social Services Law to provide for the establishment of an ALP, including the regulatory requirements and standards for its operation. In early October 1981, the Department of Health (DOH) and Social Services (DSS) sent a request for letters of interest in the ALP to adult care facilities, home care providers, hospitals, nursing facilities, local social service districts and other individuals and organizations which had expressed further information. Approximately 300 letters of interest were received. Intensive work resulted in the development of proposed regulations and a joint application which allow the applicant to complete and file a single application for ALP approval including the residential and licensed home care service agency components.

The proposed DSS regulations were published in the State Register, indicating the public comment period which ends on October 19, 1982. By early August, an ALP application process consisting of a cover letter, a program description, an application process summary, an application, the proposed DSS and DOH regulations and existing regulations for adult homes and licensed nursing programs was developed. These packages were mailed to between 150-200 individuals, agencies, local social service districts and other organizations that had expressed interest. An application return date was set for October 31, 1982.

ALP technical assistance sessions were conducted around the state. Both DSS and DOH continue to provide assistance on requests.

October 15, 1992

Dear Potential Assisted Living Program Applicant:

You have previously expressed an interest in the Assisted Living Program (ALP). Enclosed please find a list of questions asked during the provision of on-going technical assistance and at recent regional ALP sessions, along with the respective answers.

This information may assist in understanding ALP and in the development of an ALP application. Please note that the Department of Social Services ALP regulations are still in the public clearance process and neither they nor the related regulations of the Department of Health are final. Applicants will be provided the opportunity to modify their submittals if necessitated by changes to the proposed regulations. Also, the application return date is October 31, 1992. Because this is a Saturday, the Department will accept ALP applications through the close of business on Monday, November 2, 1992. Because original signatures are required, no electronically transmitted applications will be accepted.

If further clarification is needed on these issues, please contact Frank Rose or Robert Kelliher at 1-(800) 342-3715, extensions 432-2988 or 432-2991, respectively.

Sincerely,

/s/

William E. Gould

Attachment

Assisted Living Program (ALP)  
Questions and Answers

1. Q. Is ALP a program or funding source?
  - A. ALP is a program with an authorized payment mechanism for Medical Assistance (MA) eligible persons. The statute does not make a distinction between individuals' payor status (those paying privately or using public benefits) in the determination of program eligibility or public need (4,200 beds).
  
2. Q. May ALP beds be filled by residents ineligible for ALP?
  - A. For newly certified beds, only residents meeting ALP criteria would be allowed. However, an applicant has two alternatives to reach capacity:
    - (1) Approval of full capacity with no schedule of phased implementation of ALP beds. This may result in vacant beds during startup.
    - (2) Establishment of a phased schedule, not to exceed 12 months, during which time the ALP capacity is gradually increased from a lesser start-up capacity to full approved capacity. When phased capacity matches eligible resident availability, this alternative may result in fewer vacant beds.
  - For conversion of currently certified adult homes or enriched housing program beds, current residents would remain. However, the operator would be unable to admit non-ALP appropriate individuals until the ALP capacity has been reached.
  
3. Q. Will ALP beds be required to be located in a discrete unit?
  - A. An ALP operator may designate a portion of an adult care facility, e.g., a floor, wing, etc., or have ALP residents placed throughout the facility. Specific rooms need not be designated for ALP use only. (Architectural considerations may dictate where ALP beds are located in a facility.) However, residents' records must identify which residents are participating in the ALP. Facility operators may not exceed the number of authorized ALP beds or the certified capacity of the adult home or the enriched housing program. Except for the occasions included in the answer to question #2 above, ALP beds may not be occupied by non-ALP residents. For example, a 30 bed ALP with only 20 ALP residents may not use the remaining 10 ALP designated beds for non-ALP residents.
  
4. Q. Must facilities with ALP beds be sprinklered?
  - A. The building code requirements for B-2, B-3 and J-2 occupancy used for Enriched Housing Programs located in buildings with individual or shared apartments do not mandate sprinklers. Currently certified adult homes in non-combustible buildings without

sprinklers may apply for ALP approval. According to the proposed Department regulations, sprinklering is required in other existing facilities and in all new or renovated buildings.

5. Q. May the facility administrator or the home care director perform the function of directing the ALP?
  - A. Either the facility administrator or the home care director may direct the ALP. The designated individual must meet the training and experience requirements contained in proposed Part 494 of 18 New York Codes, Rules and Regulations (NYCRR).
6. Q. Who may provide Case Management services to ALP residents?
  - A. Anyone performing the case management function for ALP residents must meet the qualifications contained in proposed Part 494 of 18 NYCRR. Programs with 50 or more certified ALP beds must have a case manager designated to serve only ALP residents.
7. Q. What are the training requirements of employees providing personal care services to ALP residents?
  - A. All employees performing personal care functions must be trained as required by 18 NYCRR 505.14 (d) and (e) or successfully complete a basic training program in home health aide services or an equivalent exam approved by Department of Health (DOH).
8. Q. Can an approved ALP contract out for the provision of the home care services component?
  - A. An ALP, meeting the requirements of proposed Part 494 of 18 NYCRR, may contract for the provision of the home care services component with the exception of personal care services. Department of Social Services regulation 505.14 (c) (8) (ii) requires providers, under contract to the district for the provision of personal care services, to employ personnel who meet the minimum criteria for providers of personal care services, without sub-contracting with other provider agencies. Therefore, the ALP must be the direct employer of any personal care aides providing Medical Assistance (Title XIX) personal care services to ALP residents.
9. Q. Must an individual transferring from one approved ALP to another be screened and assessed as a new admission?
  - A. Yes. The individual will need to be evaluated, the RUG category determined and, if the individual is a Medical Assistance (MA) recipient, prior authorization granted by the local social services district.
10. Q. What is the role of a limited partnership in an ALP?
  - A. Limited partnerships may not be certified to operate adult

care facilities. Only individuals or not-for-profit corporations or partnerships made up of "natural persons" may be certified to operate adult care facilities. Limited partnerships may control the property including a lease to the certified operator(s).

11. Q. May an enriched housing ALP be located on the same site or in the same building as an adult home or the reverse?

A. Adult homes and enriched housing programs on the same site (i.e., multi-level campus) have been approved in the past. Combining both an adult home and an enriched housing program in the same building has been disapproved.

However, for the purposes of establishing an ALP, as long as the building meets the higher building code and the proper fire and smoke separations exist, the Department would consider a waiver to 488.11 of 18 NYCRR to permit both types of facilities to permit to share the same building.

12. Q. The ALP application return date, October 31, 1992, is a Saturday. What is the last day that applications will be accepted?

A. The Department will accept ALP applications through the close of business on Monday, November 2, 1992. Because original signatures are required, no electronically transmitted applications will be accepted.

13. Q. May a nursing facility become an ALP without separate certification or license as a home care provider?

A. No. The statute specifically states that the single ALP entity, in addition to certification as an adult home or enriched housing, must possess a valid license as a home care services agency or a valid certification as a home health agency (CHHA) or valid authorization as a long term home health care program (LTHHCP).

14. Q. Are any existing LTHHCP requirements waived when an ALP uses a LTHHCP for the basic home care component?

A. There is no waiver authority under Article 36 of the Public Health Law as it relates to the LTHHCP. The proposed Part 494 of 18 NYCRR also indicates that all LTHHCP regulations must be met. The Departments are prepared to address issues in this area which are related to current LTHHCP policy and procedures and for which regulatory flexibility exists.

15. Q. If an ALP uses a LTHHCP to provide services, do residents receiving such services need to be included in the LTHHCP census?

A. Yes, such residents should be included in the LTHHCP census. However, the statewide occupancy rate of the program is less than

80 percent and procedures exist within the Department of Health for administrative approval of proposals to expand LITHHCP capacity.

16. Q. Can a CHHA or LITHHCP which has a contract with an ALP, sub-contract with the ALP for the direct delivery of professional services?

A. No. Such a relationship would not be considered consistent with the legislative intent of the current statute.

17. Q. Can a licensed home care services agency serve more than one county; or be part of more than one ALP?

A. Yes. A licensed agency is not limited to a specific service area. Applicants may request multiple counties in their initial application or may add counties subsequent to initial approvals by contacting the appropriate Department of Health Area Office.

18. Q. What happens when the CHHAs and LITHHCPs in the area refuse to contract with the ALP?

A. The requirement for a contract with a CHHA or LITHHCP when the ALP is not certified as such is statutory and cannot be waived. If instances arise in which proposed applicants are unable to gain the cooperation of existing certified providers, the Departments of Health and Social Services are prepared to assist in attempting to achieve such cooperation. It should be noted, however, that the responsibility for developing a viable proposal still rests with the applicant.

19. Q. How will admission or retention appropriateness disagreements among the ALP, the CHHA or LITHHCP and the financially responsible local social services district (the district) be resolved?

A. The operator of the approved ALP is responsible for admission and retention decisions. The operator must make that decision in accordance with the provisions of statute and standards promulgated by the Departments of Health and Social Services. As always, the decision is subject to subsequent review. The ALP must be able to safely and adequately care for the individual if the services identified as necessary are provided.

Proposed Part 494 of 18 NYCRR indicates the decision must be based on the findings of the medical evaluation, a personal interview, a screening instrument, a nursing assessment, an assessment of the individual's social and functional needs and the ability of the program to meet those needs. These assessments must be conducted by the operator and, if required by the program configuration, a CHHA or LITHHCP under contract with the ALP. If the individual has a known history of chronic mental disability or if any of the above suggest such a disability, a mental health evaluation must also be completed.

For individuals eligible for or in receipt of MA, the district must review the completed assessments or conduct its own assessment. If the district agrees, appropriate MA payment is authorized. The local professional director or designee will review and make a final decision on appropriate MA authorization if disagreements between assessments arise.

It is expected that all parties will reach agreement on initial or continued appropriateness of the individual for ALP residence before admission takes place or residency continues.

20. Q. Do MA transfer of asset rules or spousal impoverishment regulations apply to ALP residents who are MA eligible?

A. No, the ALP is a long-term residential care alternative to medical institutional placement and is therefore not subject to the transfer of assets or spousal impoverishment rules which apply to nursing facility placement of MA applicants.

21. Q. Can a district be required to provide a prospective ALP applicant with a letter of intent to contract for the provision of MA funded home care services in the ALP?

A. A district cannot be forced to provide a prospective ALP operator with a letter of intent to contract for the provision of MA funded home care services. ALP applicants are required to obtain a letter of support to contract for MA funded home care services from the district in which the ALP will be physically located. This requirement ensures that the district's prior knowledge and experiences with the applicant are taken into consideration during the State Departments of Health and Social Services ALP selection process. If a district indicates that they are unwilling to support an ALP applicant for reasons other than the district's opinion that the applicant is an unsuitable sponsor, the applicant should contact the State Department of Social Services. The State Department of Social Services will contact the district to attempt to resolve district issues for refusing to contract with the prospective ALP operator.

22. Q. When will written notice and fair hearing rights be afforded an ALP resident in receipt of MA?

A. The proposed Department regulations indicate social services district will be responsible for providing written notice that affords the MA applicant/recipient fair hearing and aid continuing rights upon authorization, reauthorization, and denial of the home care services component of the ALP. Written notice must also be made to an ALP resident in receipt of MA when the MA funded home care services component is being discontinued. However, fair hearing and aid continuing rights will not be afforded in those instances when the ALP resident is being discontinued from receipt

of MA funded home care services because the resident no longer meets the ALP retention standards. When the MA eligible resident no longer meets the retention standards for the ALP, the district will continue authorization of the MA home care services component until the resident has been placed in the appropriate setting.

23. Q. Adult day health care services are included in proposed Part 494 of 18 NYCRR in the list of MA services for which the capitated rate is payment in full. Does this mean that adult day health care services are required to be provided to all ALP residents?
- A. The required composition of the ALP operating entity will allow it to provide all the services that an individual would receive in a separate adult day health care services program. Therefore, if the resident needed such services, the use of a separate program would not be necessary. If an approved ALP operator chose to send a resident who receives MA to a separate adult day health care services program, separate MA billing will not be permitted.
24. Q. A capitated rate for reimbursement of MA services provided by the ALP includes medical supplies and equipment not requiring prior approval. How will the ALP know what equipment requires prior approval and the process to obtain such approval?
- A. Prior approval is the process of evaluating the aspects of a plan of care or services in order to determine the medical necessity and appropriateness of the care or service required. It is the responsibility of the Durable Medical Equipment (DME) provider to verify whether the services or care rendered will require prior approval. When a provider determines that a service requires prior approval, he/she must obtain a prior approval number by following standard Medical Assistance procedures outlined in the Medicaid Management Information System (MMIS) Provider Manual. A list of all MA reimbursable DME is contained in this Manual. The list will be made available to ALP operators.

For example, a request for a motorized wheelchair would require prior approval because it would be necessary to verify medical need for this non-standard equipment. Within the capitated rate, the ALP would be responsible for the provision of a standard wheelchair but a DME provider would bill MMIS directly for the motorized wheelchair.

10/15/92

