ALABAMA STATE COMMITTEE OF PUBLIC HEALTH
ALABAMA DEPARTMENT OF PUBLIC HEALTH
DIVISION OF LICENSURE AND CERTIFICATION
ADMINISTRATIVE CODE

CHAPTER 420-5-4
ASSISTED LIVING FACILITIES

420-5-4-.01 General.

(1) **Legal Authority for Adoption of Rules.** Under and by virtue of the authority vested in it by the Legislature of Alabama, *Code of Ala. 1975*, Sections 22-21-20, et seq., the Alabama State Board of Health does hereby adopt and promulgate the following Rules governing all assisted living facilities.

(2) **Definitions.**

(a) "Advisory Board" means the Licensure Advisory Board established by law to serve as consultants to the State Health Officer and to assist in rule making necessary to carry out the provisions of *Code of Ala. 1975*, Section 22-21-20, et seq.

(b) "Assisted Living Facility" means an individual, individuals, corporation, partnership, limited partnership, limited liability company or any other entity that provides, or offers to provide, any combination of residence, health supervision, and personal care to three or more individuals who are in need of assistance with activities of daily living which include bathing, dressing, ambulation, feeding, toileting, grooming, medication assistance, diet, and personal safety. Exceptions to this definition are:

1. Individuals who provide residential and personal care services solely to persons to whom they are personally related, shall not be deemed to be an assisted living facility. "Personally related" means that the person receiving the residential and personal care services is the spouse, parent, sibling, adult child, adult grandchild, grandparent, great-grandparent, adult niece, adult nephew, aunt, uncle, or first cousin of the person providing such services, or stands in that relation to the current spouse of the person providing the services. This exception is only for individuals, and does not apply to corporations, partnerships, limited partnerships, limited liability companies, or any other organized entity or business.

2. Facilities whose residents are under the care, oversight or protection of another governmental agency shall not be deemed to be assisted living facilities and

shall not be subject to these rules, if both of the following conditions are satisfied:

(i) A federal, state, or other governmental body, agency, or authority has a fiduciary relationship or some other legally recognized and enforceable relationship to the residents of the facility which carries an obligation to oversee the health, safety, and welfare of the residents; and

(ii) The federal, state, or other governmental body, agency, or authority licenses, certifies, or otherwise legally authorizes the facility to provide accommodations and care for the residents.

(c) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse shall also include mental abuse, physical abuse, sexual abuse, and verbal abuse, as defined below.

(1) "Mental Abuse" means any willful act directed at a resident that is intended to result in or that is likely to result in mental distress or mental anguish. It includes humiliation, harassment, threats of punishment, and threats of deprivation.

(2) "Physical Abuse" means any willful act directed at a resident that is intended to result in or that is likely to result in injury or pain. Physical abuse includes slapping, pinching, kicking, shoving, and corporal punishment of any kind.

(3) "Sexual Abuse" means any sexually oriented behavior directed at a resident by a staff member, any sexually oriented behavior between residents that is not fully and freely consented to by both residents involved, any sexually oriented behavior between residents when either or both residents are incapable of consenting to the behavior, or any sexually oriented behavior by a visitor directed at a resident incapable of consenting to the behavior.

(4) "Verbal Abuse" means the use of oral, written, or gestured language that willfully includes disparaging or derogatory terms to residents or their families, or that is used or uttered within the hearing distance of residents or their families, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include threats of harm, or saying things to frighten a resident; such as telling a resident that the resident will never see his or her family again.

(d) "Bed Capacity" means the maximum number of beds which can be installed or set up in an assisted living facility at any given time for use of residents. The bed capacity shall be based upon space designed or specifically intended for such use, whether or not the beds are actually installed.

(e) "Bed Complement" means the number of beds normally installed in an assisted living facility for use of the residents.

(f) "Board," or "State Board of Health," means the Alabama State Board of Health.

(g) "Bureau" means the Bureau of Health Provider Standards, Alabama Department of Public Health.

(h) "Closure" means that the facility has no current occupants which are classified as residents of the facility and is not accepting and admitting new residents.

(i) "Congregate Assisted Living Facility" means an assisted living facility authorized to care for 17 or more adults.

(j) "Department" means the Alabama Department of Public Health.

(k) "Elopement" means a resident who is incapable of protecting himself or herself from harm is able to successfully leave a safe area or safe premises.

(l) "Exploitation" means the deliberate misplacement or wrongful temporary or permanent use of a resident's belongings, money, or property without the resident's consent.

(m) "Family Assisted Living Facility" means an assisted living facility authorized to care for two or three adults, which was licensed prior to October 1, 2015. Family assisted living facilities currently licensed may renew their license yearly but if closed for any reason, may not be relicensed as a family assisted living facility. No new license will be granted for assisted living facilities of fewer than three beds.

(n) "Group Assisted Living Facility" means an assisted living facility authorized to care for 3 to 16 adults.

(o) "License" means the legal authority granted by the State Board of Health to operate a facility.

(p) "License Certificate" means the document issued by the State Board of Health and signed by the State Health Officer that constitutes rebuttable evidence of the facility's legal authority to operate.

(q) “Licensed Bed Capacity” means the number of beds for which the facility has been issued a certificate of licensure by the Department. The Licensed Bed Capacity is also the maximum daily census that an assisted living facility may have in its capacity.

(r) "Licensed Practical Nurse" (LPN) means a person currently licensed as a Licensed Practical Nurse by the State of Alabama Board of Nursing in accordance with *Code of Ala. 1975*, Sections 34-21-1, et seq.

(s) “Mechanical Restraint” means any manual method or physical or mechanical device, material, or equipment that the resident cannot remove which restricts freedom of movement or normal access to one’s body (e.g. leg restraints, arm restraints, hand mitts, soft ties or vests, lap cushions, and lap trays). Facility practices that meet the definition of a restraint include, but are not limited to: using side rails that keep a resident from voluntarily getting out of bed; tucking in, tying, or using devices or materials to hold a sheet, fabric, or clothing tightly so that a resident’s movement is restricted; using devices in conjunction with a chair, such as trays, tables, bars, or belts that the resident cannot remove, that prevent the resident from rising; placing a resident in a chair that prevents the resident from rising; and placing a chair or bed so close to a structure that the structure prevents the resident from rising out of the chair or voluntarily getting out of bed.

(t) “Medication" means all substances having medicinal properties intended for external and/or internal use for the treatment, prevention, diagnosing, or curing of any disease, illness, malady, etc., in humans. The term "medication" as defined in the Pharmacological Basis of Therapeutics shall encompass all other synonymous terms such as drugs, biologicals, chemicals, potions, remedies, or poisons.

(u) “Medication Administration” means the act of giving medications to residents by a nurse or physician as defined in these rules.

(v) “Medication Error” means any preventable event that causes or leads to inappropriate medication use or harm while medication is in the control of the assisted living facility staff or resident.”

(w) “Neglect” means the failure to provide goods and services necessary to avoid physical harm or mental distress or anguish.

(x) "Pharmacist" means a person currently licensed to practice pharmacy in Alabama under the provisions of *Code of Ala. 1975*, Sections 34-23-1, et seq.

(y) "Physician" means a person currently licensed by the Medical Licensure Commission of Alabama to practice medicine and surgery in Alabama. The use of the word, "physician" in these rules shall not be deemed to preclude a properly licensed nurse practitioner or a physician assistant from performing any function in an assisted living facility that is within that individual's scope of practice.

(z) "Qualified Dietitian" means a person who is currently licensed in the State of Alabama in accordance with the provisions contained in current state statutes as governed by the Board of Examiners for Dietetic/Nutrition Practice.

(aa) "Registered Professional Nurse" (RN) means a person currently licensed as a Registered Professional Nurse by the State of Alabama Board of Nursing in accordance with *Code of Ala. 1975*, Section 34-21-21.

(bb) "Resident" means any individual in need of assistance with activities of daily living that receives residence, health supervision, or personal care in an assisted living facility.

(cc) "Specialty Care Assisted Living Facility" means a facility that meets the definition of an assisted living facility but which is specially licensed and staffed to permit it to care for residents with a degree of cognitive impairment that would ordinarily make them ineligible for admission or continued stay in an assisted living facility.

(3) **Procedure Governing Adoption, Amendment, and Rescission of Rules.**

(a) Authority. The State Board of Health, with the advice and approval of the Advisory Board defined in *Code of Ala. 1975*, Section 22-21-27, has the legal authority to adopt, reasonable rules governing the operation and conduct of assisted living facilities, and it may amend or rescind any rules previously adopted.

(b) Procedure. In adopting, amending, or rescinding rules, the Board shall follow the provisions of the Alabama Administrative Procedure Act. The effective date of any rules adopted, amended, or rescinded shall likewise be governed by the Administrative Procedure Act.

(c) Joint Hearings. All hearings shall be joint hearings set by the State Board of Health and the Advisory Board, at which time any interested member of the public may be heard.

(4) **Inspections.**

(a) Inspections Required. Each assisted living facility for which a license has been granted may be inspected by the State Board of Health, or by its authorized representatives at such intervals as the Board may direct. The State Board of Health and its authorized representatives may inspect construction work including new facilities, additions, and alterations at any time the construction work is in progress or after it has been completed.

(b) Information Disclosure. Official reports, such as statements of deficiencies generated by the State Board of Health as a result of on-site inspections, and plans of correction submitted in response to those statements of deficiencies, are subject to public disclosure. Information received through other means and reports other than statements of deficiencies shall be deemed to be confidential and shall not be publicly disclosed except in response to a valid subpoena or court order or in proceedings involving the affected facility's license or proceedings involving the license of another facility operated by the same governing authority. Confidential records in the possession of the Department are deemed to be records in the possession of the State of Alabama, and shall be freely shared with any other State of Alabama agency that presents a good reason for access to the records.

(5) **Closures.**

(a) Facility closures which are temporary or less than 30 days in length must be reported to the Department in advance and authorized. Such closures do not result in automatic termination of the facility license.

(b) Facility closures of greater than 30 days, unless authorized by the Department, will result in the license becoming null and void. Any owner or operator wishing to reopen the facility as an assisted living facility shall be required to file an initial licensure application to include plan review and building inspection and obtain a certificate of completion before processing of the application by the Department.

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