

Assisted Living and Adult Day Health Care Rules Update and FAQs

Final rules filed with the Arizona
Secretary of State on 29 April 2014



Late Renewal Applications

- Renewal applications are due to the Bureau **no later than 60 days prior** to the expiration date on the license.
- An application received 59 or fewer days prior to the license expiration date will result in the assessment of a civil penalty of \$250.00 for a first offense.
- Subsequent offenses will result in higher penalties.

Late Renewal Applications

- If an application is not received prior to the expiration date of the license, the facility may be considered closed.
- If such a facility is still providing services, enforcement action may be taken regarding unlicensed care.

Application forms

- The online renewal application system is out of service until further notice.
- Application forms can be downloaded and printed from our website at:
<http://www.azdhs.gov/als/forms/residential.htm>
 - The application can be filled out and saved to your computer.

Certified Managers

- Pursuant to [A.R.S. § 36-446.09\(A\)](#) and R9-10-803(A)(3), an assisted living facility must have a manager who holds a current and valid manager's certificate (except Adult Foster Care homes).
- There is **no** "grace period".
- Continued operation of an Assisted Living facility without a certified manager may result in revocation of the license.

Interpretation of “Health Care Institution”

- If a facility has had no residents (has not provided health-related services) for more than 12 months prior to the date the Department receives a renewal application, the Department may deny the renewal application.

Survey Rosters

- The Department will **no longer** send employee and resident rosters with Statements of Deficiencies.
- Please take notes during the inspection of your facility and during the exit interview – this will also help you to correct any deficiencies for which you are not cited, to reduce the chance that they will be cited at the next inspection.

Top ten deficiencies since 01 October 2013

All Assisted Living Facilities:

- 1: R9-10-803.C.1.a-s. Policies and procedures ("P&Ps")
- 2: R9-10-816.B.2.b. Meds administered as per order
- 3: R9-10-816.A,B,E. Medication P&Ps
- 4: R9-10-811.C.14. Notification of flu/pneumonia vaccines
- 5: R9-10-819.A.11. Poisonous or toxic material storage
- 6: R9-10-818.A.1.a-d. Disaster plan requirements
- 7: R9-10-819.A.1.b. "Hazard-free"
- 8: R9-10-808.A.3.c. Service plan incl. services provided
- 9: R9-10-818.F.4.d. Smoke detectors tested monthly
- 10: R9-10-818.A.5. Employee evacuation drills

*as of 30 June 2014

Final version of AL and ADHC Rules

- The final version of Article 8, Assisted Living Facilities, and Article 11, Adult Day Health Care Facilities, were filed with the Arizona Secretary of State on 29 April 2014.
http://www.azsos.gov/public_services/Register/2014/26/contents.shtm
- The rules became effective on 01 July 2014.
- There will be NO MORE changes made to these rules.
- Some rules in this presentation have been paraphrased or had emphasis added for clarity.

Important changes since Oct. 1st

- A number of important changes have been made to Article 8 and Article 11 in the final rules.
- This presentation will summarize some of the more important changes as well as familiarize you with the rules in general; however, it will not cover ALL changes to the rules.
- It is your responsibility to ensure you are aware of the rules as they apply to your facility.
- You can find the most up-to-date copy of the rules at our website:

<http://www.azdhs.gov/als/residential/>



Tuberculosis (“TB”) Testing

- Acceptable documentation of freedom from infectious TB [as per R9-10-113(1)(a)]:
 - Mantoux (PPD) skin test OR
 - A written statement signed by a medical practitioner that the person is free from infectious TB
 - This statement *MAY* be based on a chest X-ray, but it does not *HAVE* to be.

Tuberculosis (“TB”) Testing

- The TB test must be BOTH administered AND read prior to the individual providing services to residents or moving into the facility, as appropriate.
- Residents have 7 days from the date of acceptance to get this documentation.
- The test must be no more than **twelve** months old from when the individual is accepted as a resident, provides services to residents, or moves into the facility.

Tuberculosis (“TB”) Testing

- A new TB test must be submitted every 12 months
 - The test must be done within 30 calendar days **before** or **after** the anniversary of the most recent TB test.
- The tuberculosis infection control program referenced in R9-10-113(2) is **optional** and takes the place of the above requirements.
- All persons 12 years of age or older who live in the facility must have documentation of freedom from TB.

Tuberculosis (“TB”) Testing

- Example:
 - A caregiver gets a TB skin test on 01 December 2012
 - The caregiver is hired on 01 November 2013
 - The caregiver’s TB test is still valid, and the caregiver can provide services to residents.
 - If the caregiver is hired after 01 December 2013, s/he will need a new TB test **before** providing services.
 - The caregiver must get a new TB test between 01 November 2013 and 31 December 2013
 - There is a 60-day window to get the new TB test

Abuse/Neglect/Exploitation

- R9-10-803.J: The rule has been changed from “If abuse, neglect, or exploitation of a resident is **alleged or suspected** to have occurred on the premises...” to “If a manager has a **reasonable basis, according to [A.R.S. § 46-454](#)**, to believe abuse, neglect or exploitation has occurred on the premises...”
- The requirement to submit a written report of the facility’s investigation to the Department in R9-10-803.J.5 has been removed.

Home Health/Hospice services

- R9-10-815.F, requiring documentation of hospice or home health services to directed care residents, has been moved.
- The new rule, R9-10-803.L, requires that this documentation must be maintained for **any** resident receiving hospice or home health services.
- If the hospice or home health agency does not leave written documentation that meets the requirements in R9-10-803.L, the staff of the Assisted Living Facility are responsible for creating and maintaining the documentation.

Scope of Services

- R9-10-101.182. "Scope of services" means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being available to a patient at the health care institution.

NEW Definition of “Behavioral Care”

R9-10-101(22)(a): “Behavioral care” means limited behavioral health services, provided to a patient whose primary admitting diagnosis is related to the patient’s need for physical health services, that include:

(i) Assistance with the patient’s psychosocial interactions to manage the patient’s behavior that can be performed by an individual without a professional license or certificate including:

Definition of “Behavioral Care” cont.

R9-10-101.22.a.i: [including]:

(1) Direction provided by a behavioral health professional, and

(2) Medication ordered by a medical practitioner or behavioral health professional; or

(ii) Behavioral health services provided by a behavioral health professional on an intermittent basis to address the patient’s significant psychological or behavioral response to an identifiable stressor or stressors; and

(b) Does not include court-ordered behavioral health services.

Behavioral Care

- Behavioral Care is included in AL services and **does not** require additional authorization.
- R9-10-812 covers the requirements for the provision of Behavioral Care.
 - An evaluation of the resident by a behavioral health professional or medical practitioner is required within 30 calendar days before acceptance and every 6 months thereafter for a resident receiving behavioral care.
 - The behavioral health professional or medical practitioner must also review the scope of services.
 - The Facility must maintain documentation from the behavioral health professional or medical practitioner that the Facility is meeting the resident's behavioral health needs.

Behavioral Health Services

R9-10-101.31: "Behavioral health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's behavioral health issue.

R9-10-101.25: "Behavioral health issue" means an individual's condition related to a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.

Behavioral Health Services

[A.R.S. § 36-501.25](#): "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.

(b) The declining mental abilities that directly accompany impending death.

Behavioral Health Services

Alzheimer's and other dementias are generally NOT considered "mental disorders" and do not, by themselves, require BH Services.

Alzheimer's and other dementias also do not, by themselves, necessarily require behavioral care.

However - A person with dementia could **also** have a mental disorder which requires BH Services, or may require behavioral care.

Behavioral Care vs. Behavioral Health Services

- AL facilities can provide Behavioral Care without any additional authorization. It is included in AL services. If you are/will be providing Behavioral Health Services, you need authorization from the Department.
- There are two main questions you can ask to help determine if your facility is providing BH Services:
 1. Is your facility providing the BH treatment?
 - Prescribing medications to treat BH issues
 - Providing therapy on an individual or group basis on a more than intermittent basis
 2. Can the resident benefit long-term from the treatment being provided?

Behavioral Care vs. Behavioral Health Services

- Behavioral Health Services (“BHS”) are determined by several factors, including:
 - Diagnosis (Axis I)
 - Needs of the resident
 - Ability of the resident to benefit from BHS
 - Who is providing the behavioral health services

Behavioral Health Services

- If the licensed facility is not providing or contracting to provide the BH Services, the facility does not need authorization from the Department.
- The presence of a psychiatrist does not necessarily mean BH Services are being provided; however, if the psychiatrist is working for the facility and prescribing medications for BH specific issues (such as depression, bipolar disorders, personality disorders, schizophrenia, etc.), then it would be a BH Service.
- If counseling or behavioral modification techniques are being utilized as part of a consistent program, BH Services are being provided.

Behavioral Health Services

- R9-10-813 covers the requirements for the provision of Behavioral Health Services.
 - The Facility must have P&Ps that address general consent and informed consent.
 - A behavioral health professional must evaluate the resident within 30 calendar days before acceptance of the resident and at least once every six months thereafter.
 - The behavioral health professional must also review the scope of services.
 - The Facility must maintain documentation from the behavioral health professional that the Facility is meeting the resident's behavioral health needs.
 - The Facility must also meet the requirements in R9-10-115 and R9-10-1011(B).

Policies & Procedures

- The Rules require facilities to develop and implement Policies and Procedures (P&Ps) which were not previously required.
- Changes to the required P&Ps have been made since Oct. 1st. Please carefully review the new requirements.
- Surveys will be conducted based on outcomes **and** the facility's Policies & Procedures (P&Ps).
- **NO** agency regulates/oversees persons selling P&Ps or "approves" P&Ps.
- If you do purchase P&Ps, you will be expected to follow them – make sure they are what you want for your facility and that they cover all of the necessary topics.

Policies & Procedures

- R9-10-803.C.2: Facility P&Ps **must be available** to employees and volunteers of the assisted living facility; and
- R9-10-803.C.3: P&Ps must be reviewed **at least once every three years** and updated as needed.

Policies & Procedures

- ***NOTE: P&Ps in these slides are paraphrased for clarity, and emphases shown in the Rules in these slides are added.***
- R9-10-803(C) A manager shall ensure that policies and procedures are:
- (1) Established, documented, and implemented **to protect the health and safety of a resident** that:
 - (a) Cover job descriptions, duties, and qualifications, including required skills and knowledge, education, and experience for employees and volunteers;
 - (b) Cover orientation and in-service education for employees and volunteers;
 - (c) Include how an employee may submit a complaint related to resident care;

Policies & Procedures (803) cont.

- (d) Patient safety reporting and non-retaliatory P&P
- (e)(i-iv) CPR training, including a demonstration of ability to perform CPR, qualifications for a CPR trainer, renewal of CPR training, and documentation of CPR training
- (f) First aid training
- **(g) Response to prevent harm from a resident's sudden, intense, or out-of-control behavior**
- (h) Staffing and recordkeeping
- (i) Resident acceptance, resident rights, and termination of residency
- (j)(i) Provision of assisted living services
- (j)(ii) Making vaccinations for influenza available to residents
- (j)(iii) Obtaining resident preferences for food and for provision of AL services

Policies & Procedures (803) cont.

- (k) Provision of respite services or adult day health services
- (l) Resident medical records, including electronic medical records
- (m) Personal funds accounts, if applicable
- (n)(i-ii) Specific steps for handling resident complaints
- (o) Health care directives
- (p) Assistance in the self-administration of medication and medication administration (approved as required in R9-10-816)
- (q) Food services
- (r) Contracted services (as defined in R9-10-101.48)
- (s) Equipment inspection and maintenance, if applicable
- (t) Infection control
- (u) A quality management program as required in R9-10-804

Optional CPR Training

- R9-10-803(M): Instead of the P&Ps regarding CPR training in R8-10-803(C)(1)(e)(i-iv), a manager **may** establish P&Ps which require a caregiver to obtain, and provide documentation of, CPR training from the American Red Cross, the American Heart Association, or the National Safety Council.
- This P&P will still cover all of the requirements in R9-10-803(C)(1)(e)(i-iv).

Policies & Procedures

- More required and optional Policies & Procedures are found in the following Rules:
 - R9-10-807.D.6. Refunding fees, charges, or deposits
 - R9-10-809.A.2. & C.2. Transport and Transfer
 - R9-10-813.1. General consent and informed consent*
 - R9-10-815.F.1. Ensuring the safety of a resident who may wander*
 - R9-10-115 Behavioral health paraprofessionals and behavioral health technicians*
 - More P&Ps will be covered in specific rules
- *Optional, depending on the services offered by the facility

Caregiver training

- R9-10-806.A.1.b.ii-iv: For caregivers & managers trained prior to Nov. 1998, the caregiver/manager training may be grandfathered under these rules.
- If in doubt, contact the Department or the NCIA Board.

24-hour awake staff?

- R9-10-806.A.6: Assisted Living Centers must have a manager or caregiver awake at all times.
- R9-10-806.B.3: In Assisted Living Homes, if staff is not awake during nighttime hours:
 - b.i. The manager or a caregiver must be able to respond to a resident's needs;
 - b.ii. P&Ps must ensure that directed care residents are checked on during the night to ensure their safety.
- R9-10-807.D.5: In AL Homes, the residency agreement must state whether or not there is a caregiver or manager awake at night.

Termination of residency

- R9-10-807.G: If a resident is above the level of care that you are able to provide, remember: the health and safety of the resident comes first.
- Document any and all good-faith efforts you make to try to relocate the resident to a more appropriate facility.

Service Plans

- R9-10-808.A.3.d: Service plans require a nurse's or medical practitioner's review and signature for residents requiring:
 - Medication administration
 - Intermittent nursing services
- R9-10-808.A.3.e.ii: Service plans require a medical practitioner's or behavioral health professional's review and signature for residents requiring behavioral care

Service Plans

- R9-10-815.C.6: The service plan for a directed care resident must include either documentation:
 - a. Of the resident's weight; or
 - b. From a medical practitioner stating that weighing the resident is contraindicated.

Resident record

- R9-10-811.C.3.a. and b.: The record for a resident who has a representative needs to contain:
 - Documentation from the resident appointing the representative;
 - Documentation of a Power of Attorney; or
 - Documentation of guardianship.

R9-10-816. P&Ps for Medication Services

- R9-10-816.A.1:
 - a. Medication errors;
 - b. Unexpected reaction to a medication;
 - c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure that it meets the resident's needs;
 - d.i. Documenting medications given;
 - d.ii. Monitoring a resident who self-administers meds;
 - e. Assisting a resident in procuring medication; and
 - f. Providing medication off the premises;

R9-10-816.B.2: P&Ps for medication cont.

B.2. Addresses medication administration:

- a. Reviewed and approved by a medical practitioner, RN, or pharmacist
- b. Process to document a person authorized by a medical practitioner to administer medication under the direction of the medical practitioner
- c. Ensure medication is administered only as prescribed
- d. Documentation of refusal

R9-10-816.F.3: P&Ps for medication cont.

- a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication;
- b. Discarding or returning prepackaged/sample medication to the manufacturer if requested
- c. A medication recall and notification of residents who received recalled medication;
- d. Storing, inventorying, and dispensing controlled substances.

R9-10-816. Medication Services

- R9-10-816.C. addresses assistance in the self-administration of medication
- R9-10-816.C.1: If providing assistance in the self-administration of medication, the Facility must store the resident's medications
- R9-10-816.C.3: Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse
- R9-10-816.E: A manager or caregiver must be designated and under the direction of a medical practitioner to fill a medication organizer

Assistance in self-administration of meds

- R9-10-816.C.2.d: To verify that medications are given as ordered, confirm:
 - i. The person getting the medication is the person named on the medication container label;
 - ii. The dosage is as stated on the medication container label or according to a newer order;
 - iii. The medication is given at the time stated on the medication label or according to a newer order.
- If a medication organizer is used, confirm that the medication is given as ordered by the medical practitioner.

Drug and toxicology reference guides

- R9-10-816.D. A manager shall ensure that:
 - 1. A current drug reference guide is available for use by personnel members, and
 - 2. A current toxicology reference guide is available for use by personnel members.
 - Toxnet: <http://toxnet.nlm.nih.gov/>

R9-10-816.F Storage of Medications

- 1. Medication stored by the facility is stored in a separate locked room, closet or self contained unit (a locked cabinet or box is treated as a self contained unit); and
- 2. Stored according to instructions on the medication container

Medication errors and unexpected reactions

- R9-10-816.G: Medication errors and unexpected reactions to a medication must be reported to the medical practitioner who prescribed the medication, or another medical practitioner if that person is unavailable.

Self-administration of medication (no assistance from facility staff)

- R9-10-816.H: Addresses medications stored by the resident in the resident's room:
 - 1. Must be stored according to the service plan
 - 2. If not stored according to the service plan, update the service plan to include how the medication is being stored.
- R9-10-816.A.1.d.ii. covers monitoring a resident who self-administers medications.

Medications

- “Pouring or placing a specified dosage into a container or into the resident’s hand” has been removed from “Assistance in the self-administration of medications” as listed in R9-10-816(C)(2).
- **The Department is developing a guidance document to address this issue.**

Medication administration

- One resident may receive medication administration for some medications, assistance in the self-administration of other medications, and no assistance at all with still other medications.
- The service plan must specify the type of assistance (or administration) given.
- Administration of medication is done under the direction of a medical practitioner.

Medication administration

- R9-10-816.B.2.b, B.3.a, & E: **The Department is seeking guidance** as to whether documentation that a physician authorizing “all caregivers” to administer medications/set up medication organizers **without** the names of the caregivers will be acceptable.
 - The documentation must also be in compliance with the facility policies & procedures in R9-10-816(B)(2)(b)
 - The caregivers must have documentation of the knowledge, training, and experience required in R9-10-806(A)(3) to perform these functions

Treatments

- Treatment orders are not addressed separately.
- Treatment orders and outcomes will be included as for medications

Disaster plan requirements

- R9-10-818.A.1.a-d: The disaster plan must include:
- a. When, how, and where residents will be relocated;
- b. How a resident's medical record will be available to individuals providing services during a disaster;
- c. A plan to ensure the resident's medication will be available to administer to them during a disaster; and
- d. A plan for obtaining food and water for individuals in the assisted living facility or the relocation site.
- The plan must be kept in a location accessible to staff, and reviewed every 12 months.

Disaster & evacuation drills

- R9-10-818.A.5: Disaster drills (not merely evacuation drills) for employees must be conducted once every three months on each shift.
- R9-10-818.A.6: Evacuation drills for employees and residents must be conducted at least once every six months.
- Disaster and evacuation drills must be documented.

Adult Day Health Services

- R9-10-808.D: If a resident is receiving adult day health services, they must be provided as per R9-10-1113 (the reference to R9-10-1112 is a typo).
- The requirements in R9-10-1113 are very similar to the corresponding requirements in Article 8, but are not identical.

Resources

The Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (“NCIA Board”):

- Information about current and past certified managers, including any disciplinary actions
- Information about caregiver and manager training programs
- Rules & Statutes
- <http://www.aznciaboard.us/>
- Phone: (602) 364-2273; Fax: (602) 542-8316

Resources

Integrated Licensing Rules Implementation website:

<http://www.azdhs.gov/als/integrated/>

Office of Administrative Counsel & Rules website:

<http://www.azdhs.gov/ops/oacr/>

Bureau of Residential Facilities Licensing Website:

<http://www.azdhs.gov/als/residential/>

Contact phone numbers (Surveyor of the Day, etc.):

Phoenix office: 602-364-2639; 602-324-5872 (FAX)

Tucson office: 520-628-6965; 520-628-6991 (FAX)

