

Medicaid Assisted Living Programs (ALP) in NYS

INTRODUCTION

The Assisted Living Program provides supportive housing and home care services to individuals who are medically eligible for placement in a nursing facility but, whose needs can be met in a less restrictive and lower cost residential setting. The operator of the assisted living program is responsible for providing or arranging for resident services that must include room, board, housekeeping, supervision, personal care, case management and home health services.

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1. DIFFERENCE BETWEEN ASSISTED LIVING PROGRAM (ALP) and OTHER ASSISTED LIVING RESIDENCES (ALR) or FACILITIES (ALF)

Only official licensed **Assisted Living Programs (ALPs)** accept Medicaid and SSI to pay the fees. Most **Assisted Living Facilities (ALF)**, on the other hand, solely accept private payment for their residential services. In such facilities, however, it is possible to apply for regular community Medicaid and to receive Medicaid personal care or consumer-directed services, which are provided independently, having nothing to do with the ALF facility

State law enacted in 2004 to require licensure for "ALF" facilities does NOT apply to ALPs. This has been criticized by the Long Term Care Community Coalition because protections for ALFs do not apply to ALPs -- all the more necessary as the state expands the growth of ALPs - see below. See Long Term Care Community Coalition, *Vulnerable and Unprotected: The Status of Elderly & Disabled Assisted Living Residents in New York State (Spring 2010)* posted on <http://www.assisted-living411.org/nyassistedliving.php>

Special Needs Assisted Living Voucher Demonstration Program-- The 2018-19 NYS budget established a new program to subsidize the cost of non-Medicaid assisted living for those individuals living with Alzheimer's disease and dementia who are not eligible for Medicaid. The program will authorize up to **200 vouchers** to individuals through an application process and pay for up to seventy-five percent of the average private pay rate in the respective region. This program is intended to allow ALF residents who run out of

money to pay the private fees to remain in the facilities. As of June 23, 2021, the SNALR Voucher Program has instituted a waitlist for new applicants to the program.

- Here is information about the [Special Needs Assisted Living Voucher Demonstration Program](#), with link to application

2. NYS Laws, Regulations, and Policy Directives:

ALP STATUTE and REGULATIONS NY Social Services Law Section 461-L and 367-h (for Medicaid Assisted Living Program)

REGULATION: 18 NYCRR 505.35, 18 NYCRR [Part 494](#)

ALR STATUTE & regulations (Private Assisted Living, not paid by SSI or Medicaid) - [Social Services Law Sections 4650 et seq. \(Article 46\) and regulations \(10 NYCRR Sec. 1001 et seq.\)](#)

- [Questions and Answers on Assisted Living Regulations - Revised 11/08](#) (NYS Dept. of Health)
- [Consumer Information Guide: Assisted Living Residence](#) (12/10)
- [List of licensed Assisted Living Residences in NYS -- \[http://www.health.state.ny.us/facilities/assisted_living/licensed_programs_residences.htm\]\(http://www.health.state.ny.us/facilities/assisted_living/licensed_programs_residences.htm\)](#)

The [complaint](#) in a [April 2018 federal lawsuit challenging disability discrimination](#) in NYS assisted living reviews the legislative and regulatory framework of assisted living in NYS. The lawsuit was filed against the NYS Department of Health and two Assisted Living Programs in NYC, challenging discrimination based on disability and violation of the federal Fair Housing Act because state regulations and the individual facilities prohibit admission to people who rely on wheelchairs. See link to New York Times Article [Wheelchairs Prohibited in the Last Place You'd Expect](#), April 20, 2018 and download [complaint](#) here. The plaintiffs are the Fair Housing justice Center and two individual plaintiffs and are represented by Mobilization for Justice, Inc. and AARP Foundation Litigation. On Sept. 24, 2018, the federal court partially granted a preliminary injunction, which requires the defendant to reinstate the tenancy of the named plaintiff in her apartment, so that she could return home from the nursing home she had been trying to leave, with anticipated enrollment into a Managed Long Term Care plan to provide her with services. 2018 WL 4565152.

The Assisted Living Program is slated to be transitioned to become a benefit within the [Managed Long Term Care](#) and mainstream Medicaid managed care program. The transition was due to begin on July 1, 2017; but was delayed until Oct. 1, 2018 for New York City and Jan. 1, 2019 for the rest of the state. As of June 2021 the implementation date appears to again be delayed,

ALP ADMINISTRATIVE DIRECTIVES:

- 1994 ADM-09 The Assisted Living Program (ALP)
 - ◆ Attachment C: Agreement between a Social Services District and an Assisted Living Program
- 1996 LCM-24 Assisted Living Program (ALP) Rates and Rate Codes (PDF, 6k)
- N.Y. Dep't of Health, General Information System: Implementation of Congregate Care Level 3, Enhanced Residential Care, GIS 05 MA/050 (December 29, 2005).
- GIS 10 OLTC/008, Assisted Living Program (ALP) Model Contract (for use outside of NYC)

ATTACHMENT: Model Contract

- 11 GIS LTC- 002- Initial Assisted Living Program Contract and District Responsibility PDF Explains procedure and documents needed for ALP to apply for Medicaid for a resident to cover ALP costs.
- GIS 12 MA 017 - Assisted Living Program (ALP) Changes PDF -- implements legislative changes enacted in 2012 budget eff. 4/1/12 including:
 1. Permitting ALP's to contract with Certified Home Health Agencies (CHHA) and long term home health care programs (LTHHCP) for services included in the capitated rate;
 2. Eliminating restrictions on the number of contracts an ALP may have with those agencies
 3. Permitting ALP's to do their own assessments either directly or through CHHA/LTHHCP's
 4. Remove LDSS prior approval requirement for program eligibility, but making the ALP financially at risk for those folks based upon LDSS independent review; and
 5. Eliminating the linkage between new ALP beds and elimination of nursing home beds.
- 12- MA- 023 - Assisted Living Program (ALP) Changes Questions and Answers PDF
 - ◆ Attachment
- 2015 - NYS DOH Dear Administrator Letter 15-08 (June 18, 2015) -- Eligibility Requirements for ALP

3. WHERE ARE ALP FACILITIES?

SEE online list of ALP facilities on the State Department of Health website. - this search engine was updated and is still difficult to lose. ALPs are classified as "Adult Homes" - not ALPs. But.. when you find the facility using the search function, then click to look at the BED TYPES. It will show the number of ALP beds as well as the number of other types of beds - *ALR = Assisted living residence" , EHP - definitions are at

<https://profiles.health.ny.gov/acf>

-- This list shows contact and address information for each facility and the number of ALP beds.

In June 2008, the State announced a 40% increase in the number of ALP beds, adding 1,584 beds to the existing under 4000 beds -- the largest increase in more than a decade. (See announcement with list of facilities with number of new beds in 20 counties plus NYC -- 422 of the new beds were in the 5 boroughs of NYC).

A **5-YEAR ALP INITIATIVE to add 6000 ALP beds** between April 2009 - April 2014 began pursuant to 2009 budget legislation, which was amended and continued in 2012. Chapter 58 of the Laws of 2009 and Chapter 56 of the Laws of 2012 amended Section 461-l of the Social Services Law (SSL) to authorize the Commissioner of Health to establish up to 6,000 new Assisted Living Program (ALP) beds. The 2009 amendment required that an equal number of Nursing Home beds be decertified for all new ALP beds authorized, but this was repealed in 2012. Information about the 2009 phase is posted here, and the 2012 phase is posted here.

- YEARS 1 - 2 -- DOH states resulted in approval of 1,282 new ALP beds and the planned decertification of 844 RHCF beds. The first beds approved in this initiative were announced in August 2010, with 400 new beds approved in 10 counties, of which 200 beds were in NYC (4 boroughs outside of Manhattan). In November 2010 nine "HEAL 29 " grants were announced that will result in decertification of 292 nursing home beds and creation of new ALP beds and other long-term care services in 8 counties once construction is completed. See announcement.

2018-19 State budget --

- Allows existing ALPs to apply to DOH for up to NINE additional ALP beds that do not require major renovation or construction, and that will serve only Medicaid recipients
- Authorized up to a total of 1,000 new ALP beds :-- 500 beds targeted for counties where there is one or no ALP providers, 500 beds for counties where utilization of existing ALP beds exceeds 85 percent. rule. Beds must be for Medicaid recipients only, and the facility must contract with a Medicaid managed care plan (presumably Medicaid managed long term care)
- Beginning April 1, 2023, additional ALP beds will be approved on a case-by-case basis whenever DOH is satisfied that public need exists, considering regional occupancy rates for ACFs and ALPs and the extent to which the project will serve Medicaid beneficiaries. Additionally, existing ALP providers may apply for approval to add up to nine additional ALP beds that do not require major renovation or construction under an expedited review process.

See the DOH online map showing ALP facilities in each county in NYS, along with private Assisted Living Residences, Enriched Housing, Adult Homes, and other residences. Listing of terminology used in map.

4. PAYMENT for ALP - has TWO PARTS:

While private payment is possible, for people who meet the financial and other eligibility criteria, payment is made through a combination of:

- **Medicaid** -- (or private long term care insurance or private pay) for the aide and other health care services
- **Supplemental Security Income (SSI)** Congregate Care Level III (or private pay) -- for the residential services (room and board) (2022 figures below).

1. MEDICAID - for nursing/aide services - Facility is responsible for arranging and paying for out of its rate. Resident may not separately be approved for Medicaid home care services outside of this inclusive rate.

- **Eligibility** -- ALPs are considered community-based facilities. Community eligibility is used, meaning that there are no penalties on transfers of assets and community budgeting is used, not institutional. The income limit, however, is the same limit used for SSI Congregate Care Level III (see links in the SSI section below) (for 2021 it's \$1,488/mo. instead of regular Medicaid limit of \$884/mo.).
- **Payment** -- Medicaid rates paid to ALPs are posted online at https://www.health.ny.gov/facilities/long_term_care/reimbursement/alp/ Generally, Medicaid pays the facility at the rate of 50% of the rate that would be applicable if the resident were in a nursing home, based on his or her RUG category based on the Patient Review Instrument.

2. Supplemental Security Income (SSI)- Room and Board

- **Congregate Care Level III** Rate in schedules posted annually by NYS Office of Temporary & Disability Assistance (OTDA), which administers NYS Supplement to Federal SSI payment. See charts--

2022 Levels 21-INF-09 Attachment 1 - 2022 SSI and SSP Maximum Monthly Benefit Levels Chart

(For other years go to <https://otda.ny.gov/policy/directives/2022/#policy-archives> and in INFORMATIONAL BULLETINS look for SSI Benefit Levels Chart, usually attachment to an INF posted toward the end of each year for the following year)

On 2022 chart, **SSI level for a single person at Congregate Care Level III is \$1535/mo.** If client's income is under this amount, and if her assets are within SSI limits (\$2000 for single person plus burial arrangements, burial fund and some other exemptions) s/he may be eligible for SSI to supplement her own income up to that limit. However, all of that except a Personal Needs Allowance (PNA) must be paid to the facility for room and board. The PNA is for sundry needs not covered by the facility - cell phone, clothing, metrocard, etc. -- in **2022, the Personal Needs Allowance is \$222** per person (on same

chart). This is taken out of the SSI payment.

Examples of How Payment Works using SSI and Medicaid

EXAMPLE 1 - SSI and Medicaid: Susan has \$1300/month income from Social Security (gross.. before her Medicare Part B premium is withheld). She is single. The SSI program disregards \$20 of her income, so that her countable income is \$1280. She is eligible for SSI for the difference between \$1280 and \$1535 (2022 income level) = \$255. She is eligible for a Personal Needs Allowance (PNA) of \$222, which comes out of her income

21-INF-09 Attachment 1 - 2022 SSI and SSP Maximum Monthly Benefit Levels Chart

So she pays all of her income to the ALP facility, and it gives her back \$222 as her PNA . Because she is on SSI, she automatically will receive Medicaid to pay the other part of the ALP bill, and she is automatically enrolled in the Medicare Savings Program so that Medicaid will pay her Part B premium.

EXAMPLE II - Medicaid only, no SSI (private pay for residential services): Ben has \$1700/month Social Security (gross) assets of \$13,000, and is single. Since his assets are in excess of the \$2000 SSI limit, he is not eligible for SSI. However, he can still get Medicaid because his assets are below 2022 limit. All of the rest of his income would go to the Assisted Living Program as his spend-down of \$145 (2022):

(\$1700 - \$20 disregard - \$1535 =145). He can enroll in a pooled trust to deposit the \$145 and he will have no spend-down.

Research and consumer information on Assisted Living generally in United States -

see ProPublica.org series of investigative articles

see <https://nursinghome411.org/assisted-living/> for advocacy info in NYS by the [Long Term Care Community Coalition](#)

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