

“Executive Summary”

Survey of State Assisted Living Regulations:

- Assisted Living & Licensing
- Staffing and Staff Qualifications

NARA Adult Care Policy Committee
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Introduction

One of the functions of the NARA Adult Care Policy Committee is to make recommendations regarding minimum standards for adult care licensing. To help inform the Committee, an analysis and comparison of state regulations is a prerequisite step.

Historically, NARA has conducted state licensing comparison using the NARA Licensing Categories as a baseline. The Committee enhanced the categories to incorporate more current regulatory areas generally considered in regulations for adult care:

- General Provisions
- Physical Site
- Fire Safety and Emergency Preparedness
- Resident Rights
- Staffing
- Care and Services
- Resident Health
- Medication
- Nutrition
- Transportation
- Records

At the NARA Seminar in September 2013, members of the Committee made a presentation on the Committee's project work plan and collected input to prioritize which licensing categories were important for NARA to establish model benchmarks for assisted living. Based on the results of a participant questionnaire, the top three were:

- Staffing (includes: ratio, number, qualifications, training)
- General provision (includes: definition of assisted living, scope of services permitted)
- Resident Rights (includes: respect, privacy, autonomy, protection from abuse)

To avoid and minimize any potential misinterpretation when reviewing each state's assisted living regulations using a standardized evaluation tool based on the enhanced NARA Licensing categories, the Committee decided to conduct a survey with a focus on staffing and staff qualifications to be sent to the directors of each state's licensing agency.

Methodology

Based on the enhancements made to the "NARA Licensing categories" which align better with current regulatory areas generally considered in regulations for adult care, and taking into consideration priorities expressed by a small focus group at the 2013 NARA Seminar with respect to the Committee's future project work to establish a model benchmark for adult care regulations, a survey instrument was developed with a focus on staffing and staff qualifications.

The NARA Licensing Categories enhanced for adult care regulations indicates that the category of “Staffing” could include requirements for:

- Ratios, number of staff, qualifications
- Staff health examinations
- Staff supervision
- Staff training and development
- Prohibited actions towards residents
- Use of restrictive procedures
- Performance review / staff satisfaction

Between June and July 2014, specific questions were established to understand the presence and variation in state regulations regarding staffing and staff qualifications. Contacts for each state were obtained from the National Center for Assisted Living (NCAL) “Assisted Living Regulatory Review 2013”. Surveys were sent by email to state contacts on July 31, 2014. Alternative state contacts were sought if emails were undeliverable. Reminders were sent to those who promised to respond to the survey. Responses received between August 2014 and February 3, 2015 was summarized into tables for analysis.

Survey Findings

A. States Responding to Survey¹

The NARA survey questionnaire was sent to state licensing contacts in 51 States on July 31, 2014.

- As of February 3, 2015:
 - o 29 responses (56.9%) received – 26 from state contacts (Alaska, Delaware, District of Columbia, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Maryland, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia) and 3 completed by a member of the Committee (California, Hawaii, Washington)
 - o 6 promised to send a survey response; or request was forwarded to another person
 - o 16 no responses (due to either email undeliverable, out of office, or no response)

B. Assisted Living & Licensing

Although the focus of the survey is on staffing and staff qualifications, it is important to collect information as to how states define “assisted living” and the scope of services that may or may not be provided to provide context when interpreting survey results. Of the 29 States included in this survey:

- Definitions vary among states but a common theme is “providing support services to assist with activities of daily living”.
- With respect to reference being made to provision of nursing or health related services:
 - o 15 States (52%) include in their definition reference to provision of “health-related” services and/or “medication administration” (Delaware, District of Columbia, Georgia, Illinois, Iowa,

¹ For ease of reporting the District of Columbia is included in the use of the term “state”.

Louisiana, Maryland, Montana, New Hampshire, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia)

- 6 States (21%) include in their definitions that some level of “nursing” may be provided but place limitations such as: being intermittent, not 24-hour nursing, not skilled nursing (Delaware, Kansas, Louisiana, New Hampshire, New Jersey, West Virginia).
- 10 States (34%) made no reference to health related services, medication administration or nursing services (Alaska, California, Hawaii, Idaho, Nebraska, New Mexico, New York, South Carolina, Tennessee, Washington)
- 28 States (96%) indicated that “licensing” is required to operate or provide Assisted Living. When asked what triggers when a license is required, responses varied with respect to “type of services/care provided”, “number of residents”, “other”, or a combination of these.

The States of California and Hawaii appear to have criteria other than the type of services/care provided and/or the number of residents, which trigger when a license is required.

C. Staffing Requirements

The NARA Licensing Categories enhanced for adult care regulations (Appendix 1) indicates that the category of “Staffing” could include requirements for:

- Ratios, number of staff, qualifications
- Staff health examinations
- Staff supervision
- Staff training and development
- Prohibited actions towards residents
- Use of restrictive procedures
- Performance review / staff satisfaction

To understand the presence and variation in state regulations regarding staffing and staff qualifications, specific questions were developed for the survey. Of the 29 States included in this survey:

- 22 States (76%) have regulations that “do not” specify a minimum staff-to-resident ratio. Unsolicited comments from 8 respondents typically refer to providing adequately trained staff in sufficient numbers to meet the needs of the residents and/or assure resident health and safety (Alaska, California, Delaware, Idaho, Oregon, Rhode Island, Texas, Washington).
- 7 States (24%) have regulations that specify the minimum staff-to-resident ratio (California, Georgia, Michigan, New Mexico, New York, South Carolina, West Virginia).
- 6 States (21%) have regulations that specify the minimum number of “direct care” staff hours per resident per day (Illinois, Michigan, New Mexico, Pennsylvania, South Carolina, West Virginia).
- 18 States (62%) have regulations that specify “having a licensed nurse available (or on-call) at all times” (Alaska, California, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maryland, Montana, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Washington, West Virginia).

- 19 States (65%) have regulations that specify “having to provide additional staff necessary to meet the needs of residents (e.g. for transportation, laundry, food service, housekeeping, facility maintenance)” (Alaska, California, Georgia, Idaho, Iowa, Louisiana, Michigan, Montana, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia).
- With respect to an “Administrator” of an Assisted Living facility:
 - o 22 States (76%) have regulations specifying the person’s “minimum age”
 - o 23 States (79%) have regulations specifying the person’s “minimum level of education”
 - o 27 States (93%) have regulations specifying the person’s “minimum level training and/or certification”
- 8 States (27%) require a “Supervisor or Manager of Care staff” (Delaware, Idaho, Illinois, Iowa, Maryland, Michigan, New Jersey, Rhode Island). Of these 8 States:
 - o 4 have a regulation specifying the person’s minimum age;
 - o 6 have regulations specifying their minimum level of education; and
 - o 8 have regulations specifying minimum level of training and/or certification.
- With respect to an “Direct Care staff”:
 - o 18 States (62%) have regulations specifying the person’s “minimum age”
 - o 4 States (14%) have regulations specifying the person’s “minimum level of education”
 - o 12 States (41%) have regulations specifying the person’s “minimum level training and/or certification”
- With respect to an “Direct Care staff”, as a condition of employment in an Assisted Living facility:
 - o 15 States (52%) have regulations requiring a “valid/current First Aid training certificate”
 - o 9 States (31%) have regulations requiring a “valid/current CPR training certificate”
 - o 12 States (41%) have regulations requiring a “medical evaluation prior to employment”
 - o 5 States (17%) have regulations requiring an “immunization history from their health care provider”
 - o 19 States (65%) have regulations requiring a “Tb status from their health care provider”
 - o 24 States (83%) have regulations requiring a “criminal history background check prior to employment”
 - o 7 States (24%) have regulations requiring a “criminal record checks to be redone at specific intervals”
- With respect to an “staff conduct” at an Assisted Living facility:
 - o 28 States (96%) have regulations prohibiting staff from “neglecting residents”
 - o 26 States (90%) have regulations prohibiting staff from “abusing residents”

- 20 States (69%) have regulations prohibiting staff from “applying restraints on residents”. Of the 9 States that don’t have regulations prohibiting staff from applying restraints, 2 States indicates that certain types of restraints are allowed under specific circumstances and/or staff must be trained.
- With respect to regulatory requirements for staff training and development:
 - 24 States (83%) require facilities to “have an annual training plan for staff”
 - 26 States (90%) require facilities “to provide dementia-specific training for staff”
 - 7 States (24%) require facilities “to conducting regular reviews of staff performance”
 - 2 States (7%) require facilities “to regularly measure or survey staff satisfaction”

Conclusions

It is anticipated that NARA may be able to describe state trends and patterns in regulatory requirements. Using the enhanced NARA Licensing Category for “General Provisions” and “Staffing” in adult care settings and what those categories include as a baseline, we can conclude from the survey sample that:

A. General Provisions

- Definition (e.g. for “assisted living”)

How assisted living is defined in regulations vary among States. Nevertheless, “licensing” is required to operate and the trigger tends to be dependent on the type of services provided and the number of persons in care.

- Definition of the scope of services that may or may not be provided

The scope of services among State regulations appears to have the common theme of “providing support services to assist with activities of daily living”. Variation among States exist as to whether health-related services, medication administration or skilled nursing is included or excluded from the scope of services permitted in an assisted living setting.

- Type of events that must be reported to Licensing

This information was not collected in this survey.

B. Staffing

- Ratios, number of staff, qualifications

Based on the survey sample, State assisted living regulations do not typically have specific staff-to-resident ratios. On the contrary, regulations for assisted living typically refer to providing adequately trained staff in sufficient numbers to meet the needs of the residents and/or assure resident health and safety.

Regulatory requirements for Administrators appear to emphasize minimum level training and/or certification.

Regulatory requirements for Direct Care staff appear to emphasize meeting a minimum age and having a satisfactory criminal record background check.

- **Staff health examinations**

Obtaining an employee's Tb status from their health care provider appears to be a requirement in just over half of the States sampled in this survey. In contrast, obtaining immunization history for vaccine preventable communicable diseases is generally not reflected in assisted living regulations. Such requirements may be contained in other public health regulations for the State.

- **Staff supervision**

Less than one quarter of the States sampled have a requirement for a Supervisor or Manager of Care staff. However, just over half of the States sampled have a requirement for a licensed nurse to be available (or on-call) at all times.

- **Staff training and development**

Most of the States sampled have requirements that assisted living settings must (i) have an annual training plan for staff and (ii) provide dementia-specific training for staff.

- **Prohibited actions towards residents**

Most of the States sampled have requirements prohibiting staff from neglecting or abusing residents.

- **Use of restrictive procedures**

Approximately two-thirds of States sampled prohibit the use of restraints. In States where restraints are not prohibited, there are regulatory requirements specifying that only certain types of restraints are allowed under specific circumstances and/or staff must be trained.

- **Performance review / staff satisfaction**

Only about one-quarter of States sampled require assisted living settings to conduct regular reviews of staff performance. Two States in the sample have regulatory requirements whereby assisted living settings must regularly measure or survey staff satisfaction.

A full copy of the NARA "Survey of State Assisted Living Regulations: assisted living & licensing; staffing and staff qualifications" which includes the survey questionnaire developed and summary tables of survey responses is available in the NARA Member's Area of the NARA website.

Appendix 1: NARA Licensing Categories

Chapter 2: Formulation of Rules in the NARA Licensing Curriculum (2000) includes a section on “Subject Areas for Licensing Rules. This set of subject areas is often referred to as the “NARA Licensing Categories” which should be incorporated into any set of human care licensing. Those categories were used as a starting point and enhanced by the NARA Adult Care Policy Committee to incorporate more current regulatory areas generally considered in regulations for adult care.

Licensing Categories – for adult care

1. General Provisions
 - Definition (e.g. for “assisted living”)
 - Definition of the scope of services that may or may not be provided.
 - Type of events that must be reported to Licensing.
2. Physical Site
 - Accessibility, windows, lighting, room temperature, water temp.
 - Telephone and communications.
 - Furnishings, maintenance.
 - Bedroom – floor area & occupancy.
 - Bathrooms and bathing.
 - Kitchen and dining area.
 - Living room and lounge areas.
 - Recreational areas – indoor and outdoor.
 - Laundry area for resident use.
3. Fire Safety and Emergency Preparedness
 - Smoke detectors, sprinkler system, emergency lights, emergency plan.
4. Resident Rights
 - Respect, privacy, autonomy, protection from abuse
5. Staffing
 - Ratios, number of staff, qualifications.
 - Staff health examinations.
 - Staff supervision.
 - Staff training and development.
 - Prohibited actions towards residents.
 - Use of restrictive procedures.
 - Performance review / staff satisfaction.
6. Care and Services
 - Orientation package for new residents.
 - Admission / discharge criteria.
 - Residency agreement.
 - Individual services / treatment plans.
 - Developmental and recreational activities.
 - Equipment for programs.
 - Infection control

7. Resident Health

- Medical evaluation prior to admission.
- Immunization history and Tb status.

8. Medication

- Storage, training, administration.

9. Nutrition

- Storage, preparation and serving.
- Quality and quantity of food served.
- Resident participation in meal planning and preparation.

10. Transportation

- Scope of transportation services provided.

11. Records

- Confidentiality, content, retention.