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 ALP and other Assisted Living Residences or Facilities (ALP vs ALF/ALR)
2. NYS Laws, Regulations, and Policy Directives
3. Where are ALP Facilities?
4. Payment for ALPs - Has Two Parts: SSI and Medicaid
5. NEWS ITEMS

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 - https://profiles.health.ny.gov/acf

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 and as of January 2023 no implementation date appears to be set.

ALP ADMINISTRATIVE DIRECTIVES:

Medicaid Assisted Living Programs (ALP) in NYS
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 https://profiles.health.ny.gov/acf

4. PAYMENT for ALP - has TWO PARTS:

ALP’s have two components of their rates --
1. **Room and Board** - paid either by resident's own income or, if income under the SSI limit for Congregate Care Level III, resident's income is supplemented by Supplemental Security Income. (SSI)

2. **Aide and other Health Care Services** -- Paid by Medicaid, with a contribution by the resident toward the cost of care if they have excess income. See more below.

1. **More on ROOM AND BOARD charges in an ALP --**

   - **Supplemental Security Income (SSI)** Is Resident's income under the Supplemental Security Income Congregate Care Level III level for a single person (2023 - $1608/mo) after $20 disregard? If so, all of their income must be used to pay for room and board, plus they could be eligible for an SSI supplement so that the facility receives a total of $1608/mo including the resident's income. SSI 2023 Levels SSI/SSP 2023 Maximum Monthly Benefit Amounts posted at [https://otda.ny.gov/programs/ssp/](https://otda.ny.gov/programs/ssp/)

(For other years go to [https://otda.ny.gov/policy/directives/2023/#policy-archives](https://otda.ny.gov/policy/directives/2023/#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)

**SSI ASSET LIMIT:** $2000 for single person plus burial arrangements, burial fund and some other exemptions.

**Personal Needs Allowance (PNA)** resident on SSI entitled to keep this or sundry needs not covered by the facility - cell phone, clothing, metrocard, etc. (2023 - $241 per person) (on same chart). This is taken out of the SSI payment.

- **Is income above the SSI limit?** If so, resident is expected to pay all of their income to the facility up to the MEDICAID limit for ROOM AND BOARD.
  - ♦ Before 2023, Medicaid used the same limit as the SSI Congregate Care Level III limit (2023 - $1608/mo) after $20 disregard).
  - ♦ However in 2023, the newly increased income levels are higher ($1677/mo.) and Medicaid uses this level - see GIS 23 MA/02 - and ATTACHMENT
  - ♦ Resident expected to pay $1677/mo toward room and board and presumably should be able to keep a **Personal Needs Allowance (PNA)** for sundry needs not covered by the facility - cell phone, clothing, metrocard, etc. (2023 - $241 per person)

- **Is income below the SSI limit but resources exceed the $2000 SSI asset limit?**
  - ♦ Resident is obligated to pay the balance of the rent from assets until they are spent down to the SSI asset level.

- **Married couples in an ALP - both on SSI/Medicaid** - "When a couple enters a Level 3 facility, they will usually get the couple Federal Benefit Rate [SSI FBR] and couple OSS E [Optional State Supplement Code E for Congregate Care Level 3] for the month of change only. After that, they are treated as two individuals, since
couple status can exist only in households, not institutions, per SI 00501.154."
Social Security Administration Program & Operations Manual, Â§ SI
NY01415.026 New York Payments.

2. HEALTH & LONG TERM CARE COMPONENT OF ALP RATE - paid by MEDICAID -
for nursing/aide services - Resident may not separately be approved for Medicaid home

care services outside of this inclusive rate.

- Medicaid ALP Eligibility -- ALPs are considered community-based facilities.
  Community eligibility is used, meaning:

  ♦ Community Medicaid asset limit is used - $30,182 in 2023)
  ♦ No penalties on transfers of assets
  ♦ Community budgeting is used, not institutional.
  ♦ The income limit is the higher of the SSI Congregate Care Level III (see links
    in the SSI section above) or the current community Medicaid rate. (for 2023
    the regular Medicaid rate is higher, so the ALP Medicaid rate is $1677/mo).
    See GIS 23 MA/02.

- Payment -- 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. Medicaid rates paid to ALPs are
  posted at https://www.health.ny.gov/facilities/long_term_care/reimbursement/alp/

- Spend-down - if the resident's income is above the Medicaid level above
  ($1677/mo. in 2023), the resident is expected to contribute the excess income
  toward the cost of care as a spend-down. The excess income may be placed into a
  Pooled Income Trust/ Supplemental Needs trust to eliminate the spend-down.

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. Her assets are
under $2000. The SSI program disregards $20 of her income, so her countable income is
$1280. She is eligible for SSI for the difference between $1280 and $1608 (2023 income
level) = $328.

She pays all of her Social Security and SSI income to the ALP facility, except she can keep
(or get back) $241 as her Personal Needs Allowance (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 which will pay her Part B premium
and qualify her for Extra Help with Part D drugs.

<p>| How Rent Payment Works if Income Under SSI Congregate Care Level III Limit (Susan) |
|---------------------------------|---------------------------------|
| Social Security                 | $1300                           |
| - $20 disregard                 | - 20                            |</p>
<table>
<thead>
<tr>
<th>NET INCOME</th>
<th>$1280</th>
</tr>
</thead>
<tbody>
<tr>
<td>SSI Limit - Congregate Care Level 3 (2023)</td>
<td>$1608</td>
</tr>
<tr>
<td>SSI Supplement for Susan (SSI Limit minus Net Income)</td>
<td>$328</td>
</tr>
<tr>
<td>Susan can keep Personal Needs Allowance</td>
<td>$241</td>
</tr>
<tr>
<td>Susan pays to ALP for RENT - Social Security + SSI except for PNA</td>
<td>$1387</td>
</tr>
</tbody>
</table>

**EXAMPLE II - Medicaid only, no SSI (private pay for residential services):** Ben has $1900/month Social Security (gross) and assets of $25,000, and is single. Since his assets are in excess of the $2000 SSI limit, and his income is above the $1608 Congregate Care Level III SSI limit, he is not eligible for SSI. However, he can still get Medicaid because his assets are below the 2023 limit. All of his income not used to pay for his Part B premium and the $20 disregard must go to the Assisted Living Program to pay his rent. His spend-down is $38.10, which he may deposit in a pooled trust. If he adds $164.90 to that pooled trust deposit (total $272) he will be enrolled in QMB that will pay his Part B premium AND he will have no spend-down. He presumably can keep a Personal Needs Allowance ($241-2023).

| How Rent Payment Works if Income is OVER SSI Congregate Care Level III Limit (Ben) |
|---------------------------------------|--------|
| Social Security                       | $1900.00 |
| - $20 disregard                       | - 20.00 |
| - Part B premium (2023)               | - 164.90 |
| NET INCOME                           | 1715.10 |
| Medicaid income level 2023            | 1677.00 |
| Ben can presumably keep Personal Needs Allowance (2023) | 241.00 |
| Spend-down (may deposit into pooled trust)* | 38.10 |

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

see [ProPublica.org series of investigative articles](https://www.propublica.org)

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

This article was authored by the Evelyn Frank Legal Resources Program of New York Legal Assistance Group.