

**Vermont Department of Banking, Insurance, Securities
and Health Care Administration**

Health Care Administration Bulletin 119

**Certificate of Need Review: Adult Day Programs and Assisted Living
Residences Generally Exempted**

Introduction

The purpose of this bulletin is to notify potential developers of Adult Day Programs and Assisted Living Residences how the Department handles Certificate of Need (CON) review of such entities.

The question concerns the population that adult day programs and assisted living residences serve and what services that population receives. As this population becomes increasingly frail and ages in place, more and more of these facilities have medical components that include medical "diagnosis" and, to some extent, medical "treatment" on site. Examples include: physical, occupational and speech therapies, wound care, nebulizer treatments, pouring and dispensing of medications by nurses, drawing blood, checking blood glucose levels, foot care, checking vital signs. Staff, usually Licensed Nursing Assistants (LNA) level staff, also assist with personal care such as feeding, ambulation, toileting, and bathing.

Vermont's CON law defines a "health care facility" as "all persons or institutions, whether public or private, proprietary or not-for-profit, which offer diagnosis, treatment, inpatient or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered."

The law defines healthcare services as "activities and functions of a healthcare facility that are directly related to care, treatment or diagnosis of patients." Health care facilities providing services or initiating projects over certain dollar thresholds require a CON before such actions can be implemented.

Adult Day Programs

Historically, the Department has not reviewed Adult Day Programs as the services provided in adult day settings, until recently, have been primarily social, rather than medical, in nature. There are 14 Adult Day Programs operating 17 different sites that are certified by the Vermont Department of Disabilities, Aging and Independent Living (DAIL) and none were reviewed through the CON program.

Currently DAIL certifies all Adult Day Programs in Vermont and has written Standards that must be met. To be certified by DAIL, each Adult Day Program must now have a Registered Nurse to provide health coordination, including completing health assessments, contributing to the development of written plans of service, evaluating and documenting the on-going services provided to participants and providing instruction and supervision to staff. According to *Standards for Adult Day Services in Vermont* (page 22) the Registered Nurse is permitted to perform the full range of activities allowed under the Vermont Nurse Practices Act. Registered Nurses in Adult Day settings have performed assessments and evaluations, coordinated care with physicians, drawn blood, performed wound care, administered prescription drugs and are permitted to practice within the scope allowed by the Vermont Nurse Practices Act. Adult Day Programs are regulated by DAIL including the following areas:

- Initial certification: DAIL certifies each program initially, determining whether the program meets the DAIL standards;
- Annual quality management site review: DAIL conducts such reviews at previously certified programs, which includes interviews with participants, family members, staff and other relevant persons/organizations;
- Internal quality assurance program;
- Agency contracts with other entities;
- Program administration;
- Program policies;
- Participant policies, including grievance policy with final appeal to Board of Directors, and policy for involuntary discharge from the center;
- Participant records;
- Facility requirements.

Assisted Living Residences

Historically, the Department has not asserted jurisdiction over Assisted Living Residences as they have been viewed as housing and housing is not subject to CON review. There are currently 5 licensed Assisted Living Residences in Vermont. DAIL licenses Assisted Living Residences in Vermont and has written licensing regulations. Regulations for Assisted Living Residences are based on the Residential Care Home regulations with additional requirements for Assisted Living Residence settings. Typically, on-going nursing and medical care is not needed for most residents in Assisted Living Residences. If on-going nursing and medical care is needed, the resident may contract with an existing provider or receive nursing services from the nursing staff employed by the Assisted Living Residence. Nursing services in Assisted Living Residences are currently based on tiers related to care needs.

DAIL regulates Assisted Living Residences and conducts the initial survey prior to issuing a license and may inspect any facility licensed as an Assisted Living Residence at any time DAIL considers an inspection necessary. DAIL also has the authority to investigate and survey a home that is unlicensed and meets the definition of a residential care home.

DAIL's regulation for Assisted Living Residences allows for the provision of health care, including the following:

- Nursing care and medication management (assistance and administration of medication) provided under the supervision of a Registered Nurse;
- Home health services: A resident may choose to have needed home health services delivered by an existing home health agency or by the nursing staff at the Assisted Living Residence.

Conclusions and Guidance

If medical services in Adult Day Programs and Assisted Living Residences are secondary and limited, and are permitted and regulated by DAIL, such services would not require CON review.

Prior to initiating diagnosis or treatment projects or services, that would exceed the CON dollar thresholds,¹ Adult Day Programs and Assisted Living Residences should send a letter to the Department and DAIL outlining the projects or services in sufficient detail to allow the Departments to determine whether a proposed expenditure or action would result in the provision of a level of diagnosis or treatment that would require CON review because medical services are no longer secondary and limited.

Questions relating to whether and Adult Day Programs and Assisted Living Residences are subject to CON jurisdiction should be directed to Jennifer Garson or Donna Jerry at 802-828-2900.

Date: 4/12/06

s/JPC
John P. Crowley, Commissioner

¹ See 18 V.S.A. §9434. Generally the thresholds include: Construction, development, purchase, renovation or other establishment of a health care facility or any capital expenditure by or on behalf of a health care facility for which the cost exceeds \$1.5 million or exceeding \$750,000 if the Commissioner finds the project a) may be inconsistent with the Health Resource Allocation Plan; b) has the potential for significantly increasing utilization or rates; or c) may substantially change the type, scope or volume of service; offering of a health care service or technology having an annual operating expense which exceeds \$500,000 for either of the next two budgeted fiscal years; or offering of any home health service.