

# 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.

**APRIL 2024 NEWS = Waitlist for Special Needs Vouchers for Residents with Alzheimer's Lifted, subject to appropriations. See [here](#)**

## IN THIS ARTICLE:

1. Difference between ALP and other Assisted Living Residences or Facilities (ALP vs ALF/ALR)
2. Eligibility for ALP
3. **NYS Laws, Regulations, and Policy Directives**
4. **Where are ALP Facilities?**
5. **Payment for ALPs - Has Two Parts: SSI and Medicaid**
6. **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
- April 2024 UPDATE - The NYS FY 2024-25 Budget -- [S8307](#) Section F --amended this program by specifying that the individual must "reside in a special needs assisted living residence certified under [Public Health Law section 4655](#)," This seems to have already been a requirement, but is now memorialized in the statute. The 2024 amendments also remove the limit of 200 vouchers, but make vouchers available "subject to appropriations." The amendments are effective April 1, 2024, but it is unclear extent to which "appropriations" are limited.

## 2. Eligibility for ALP

NY Social Services Law Sec. [461-l, subd. 1\(d\)](#) defines an "Eligible person" as a person who:

(i) requires more care and services to meet his or her daily health or functional needs than can be directly provided by an adult care facility and although medically eligible for placement in a residential health care facility, can be appropriately cared for in an assisted living program and who would otherwise require placement in a residential health care facility due to factors which may include but need not be limited to the lack of a home or a home environment in which to live and receive services safely; and

(ii) is categorized by the long-term care patient classification system as defined in regulations of the department of health as a person who has a stable medical condition and who is able, with direction, to take action sufficient to assure self-preservation in an emergency. In no event shall an eligible person include anyone in need of continual nursing or medical care, a person who is chronically bedfast, or anyone who is cognitively, physically or medically impaired to such a degree that his or her safety would be endangered.

Regulations were amended in 2018 --18 NYCRR Â§487.4(b) and Â§488.4(b) -- to codify requirements that require admission and retention of residents who primarily use a wheelchair for mobility when certain criteria are met (i.e., the facility is equipped and staffed to meet the prospective resident's needs, the prospective resident is medically stable, and the prospective resident is able to self-preserve in the event of an emergency). These requirements were the result of a [April 2018 federal lawsuit](#) 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 were 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.

See **NYS DOH 2023 Dear Adult Facility Administrator Letter 23-15: Changes to Admission and Retention Regulations** (PDF) with its attachments:

- [23-15: Fair Housing Laws](#) (PDF)
- [23-15: Model Non Discrimination Policy for Adult Care Facilities](#) (PDF)
- [23-15: Reasonable Accommodation Policy and Request Form](#) (PDF)
- [23-15: Reasonable Accommodations and Reasonable Modifications Questions and Answers](#) (PDF)
- [23-15: The Fair Housing Amendments Act of 1988](#) (PDF)
- [May 4, 2023 Webinar](#) (PDF)

See also [10 NYCRR 487.4](#)

The Assisted Living Program was 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 and no implementation date appears to be set

### **3. 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)
- [NY Public Health Law Section 3614, subd. 6](#) (Medicaid payments to ALPs)
- 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>

## **ALP ADMINISTRATIVE DIRECTIVES & Dear Administrator Letters:**

- **Dear Adult Care Facility/Assisted Living Administrator Letters** - posted [here](#) for directives in 2019 and after. Directives prior to 2019 must be obtained from [acfinfo@health.ny.gov](mailto:acfinfo@health.ny.gov).
  - ◆ 2023 - 23-15: Changes to Admission and Retention Regulations (PDF) with its attachments listed above in 2. Eligibility.
  - ◆ 2015 - NYS DOH Dear Administrator Letter 15-08 (June 18, 2015) -- Eligibility Requirements for ALP
- 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)
- 02ADM-06 - Provision of Hospice Care in Adult Care Facilities and Assisted Living Programs (PDF)
- GIS 05MA050 - Implementation of Congregate Care Level 3, Enhanced Residential Care
- 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

## 4. 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 use. 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>

## 5. 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/>

(For other years go to <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. NY Public Health Law Section 3614, subd. 6. Medicaid rates paid to ALPs are posted at [https://www.health.ny.gov/facilities/long\\_term\\_care/reimbursement/alp/](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.

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

**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 \$202.00) 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).

<b>How Rent Payment Works if Income is OVER SSI Congregate Care Level III Limit (Ben)</b>	
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

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

- see [ProPublica.org](https://www.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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Article ID: 150

Last updated: 20 Apr, 2024

Revision: 33

Medicaid -> Other Services -> Medicaid Assisted Living Programs (ALP) in NYS

<http://health.wnyc.com/health/entry/150/>