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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 92 LCM-125

Date: August 18, 1992

Division: Medical Assistance

TO: Local District Commissioners

SUBJECT: The Assisted Living Program

ATTACHMENTS: Assisted Living Program Applicant Letter  
(available on-line)  
Assisted Living Program Information  
(available on-line)  
Assisted Living Program Application Process  
(available on-line)  
Assisted Living Program Application  
(not available on-line)  
Proposed Assisted Living Program Regulations  
(not available on-line)

The purpose of this memorandum is to inform the social services districts of the distribution of the attached application and informational packet to potential Assisted Living Program (ALP) sponsors and to advise the districts they may be contacted by potential Assisted Living Programs in their district to obtain a letter of intent to contract with approved applicants for the provision of ALP services.

The district's letter of intent to contract is a required component of the initial ALP application process. It serves to assure the State Departments of Health and Social Services that the local social services district supports the ALP sponsors application and will contract with that applicant should their application to become an ALP be approved. Prior to full Assisted Living Program approval, the ALP will be required to sign a contract with the social services district.

The purpose of the contract between the Assisted Living Program and the district is to establish the provision of Assisted Living Program services pursuant to Chapter 165 of the Laws of 1991 and New York State Department of Social Services Regulation 18 NYCRR 505.35 and/or other Department regulations. The ALP model contract, which will be included in the draft Assisted Living Program administrative directive being developed by the Division of Medical Assistance, establishes that the Assisted Living Program

is an independent contractor, responsible for the provision and overall case management of ALP services. It further establishes the role of the social services district in the review and authorization of services for Medicaid eligible residents of the ALP. The contract addresses all aspects of the administration, coordination, provision and termination of Assisted Living Program services. The ALP contract differs from district's personal care services contracts in that the State, through the nursing home bed need methodology, will be determining the qualifications of and the number of ALPs that will be approved. The ALP model contract primarily serves to assure the local district's continued involvement in the selection of Assisted Living Program applicants, and in the authorization of Medical Assistance (MA) funded home care services to recipients residing in approved Assisted Living Programs.

Districts are reminded that the Assisted Living Program was developed to offer a lower cost long term care alternative for individuals who are medically eligible for nursing facility placement but who can be served in a less restrictive environment. Chapter 41 of the Laws of 1992 also requires districts to utilize the ALP, when appropriate, as a cost-effective alternative in the development of Medical Assistance recipients home care services care plans. ALPs will serve as a new long term care placement resource for eligible MA recipients who may be in hospitals in alternate care status awaiting a nursing home bed or who are current home care recipients waiting for nursing facility placement because their home is no longer a suitable place to live or in which to receive services.

Any questions relating to the Assisted Living Program should be directed to Margaret O. Willard in the Division of Medical Assistance or Frank Rose in the Division of Adult Services. Any questions relating to the ALP model contract should be directed to Marcia Anderson in the Division of Medical Assistance. Their telephone numbers are 1-800-342-3715, extension 6-7480, or 432-2404 or extension 3-5490 respectively. They may also be reached directly at (518) 486-7480, 432-2404 or 473-5490.

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Jo-Ann A. Costantino  
Deputy Commissioner  
Division of Medical Assistance

Dear Potential Assisted Living Program Applicant:

Chapter 165 of the Laws of 1991 defines the Assisted Living Program and specifies the criteria that will be used to approve and regulate these programs. The Assisted Living Program is designed to serve as an alternative to nursing home placement for individuals who historically have been admitted to nursing facilities for reasons that are primarily social, rather than medical in nature. The target population for the Assisted Living Program includes those individuals who would be classified in the "health related" categories of the nursing facility Resource Utilization Groups (RUGs) as identified using the Patient Review Instrument (PRI).

The Assisted Living Program was jointly developed by the Department of Health and the Department of Social Services. The primary goal of both departments in this effort is to develop a less restrictive and lower cost residential setting that can serve people who don't need the highly structured, highly medical environment of a nursing facility.

In developing the Assisted Living Program, the departments understood that many individuals must seek placement in a nursing facility because they no longer have a suitable home in which to live or in which home care services may be provided safely. Other individuals require more supervision than can be economically provided through home care, yet they do not have health care needs that would make placement in a nursing facility the only possible option.

The initial work toward the Assisted Living Program was conducted as part of the development of a new nursing home bed need methodology (Section 709.3 of the 10 NYCRR). The need estimates developed through this methodology for 1993 include 4,200 beds to serve elderly people who previously would have been served in a nursing home. These are individuals who could be served elsewhere if a program were available that could meet both their needs for residential services and health care services and for which there was viable reimbursement.

The Assisted Living Program meets these needs by combining an adult home or enriched housing program with home care services to provide residential and supportive services. The program also establishes a Medicaid reimbursement mechanism to pay for the home care services provided through the program on a capitated basis.

The purpose of this material is to provide potential applicants with information, guidelines and timetables for submitting an application for the Assisted Living Program. The package contains general program information, proposed regulations which were filed with the Secretary of State for public comment, application procedures, application forms and instructions. Should significant changes take place in the regulations, the changes will be sent to potential applicants and sufficient time will be given to act on the changes.

Because the approval process is linked to the long term care need methodology, applications will be batched by HSA Region and reviewed as a group. Interested applicants should read carefully the enclosed material on the Assisted Living Program and submit an application which addresses all of the items detailed. Applications must be received no later than October 31, 1992 and should be addressed to:

Robert Kelliher  
Certification and Finance Unit  
Division of Adult Services  
40 North Pearl Street  
Albany, N.Y. 12243

Until October 31, 1992 staff at the Department of Health and the Department of Social Services will respond to questions about the application and the application process. Technical Assistance sessions will be conducted at:

Buffalo Location  
Thursday, August 20, 1992, 12:00 pm - 3:00 pm  
St. Paul's Cathedral  
128 Pearl Street  
Buffalo, NY 14202-4075

Syracuse Location  
Friday, August 21, 1992, 10:30 am - 1:30 pm  
Onondaga County Department of Social Services  
421 Montgomery Street  
Civic Center  
13th Floor Conference Room  
Syracuse, NY 13202

Albany Location  
Tuesday, August 25, 1992, 10:00 am - 1:00 pm  
New York State Department of Health  
Wadsworth Center for Laboratories and Research  
Empire State Plaza  
P.O. Box 509  
Albany, NY 12201-0509

Nassau Location  
Wednesday, August 26, 1992, 10:00 am - 1:00 pm  
Nassau County Department of Social Services  
1st Floor Auditorium  
County Seat Drive  
Mineola, NY 11501

Westchester Location (White Plains)  
Thursday, August 27, 1992, 10:00 am - 1:00 pm  
Westchester County Department of Social Services  
85 Court Street Basement  
White Plains, NY 10601

We encourage potential applicants to attend. If you wish to attend, please register by contacting our Certification and Finance Unit at (518) 432-2991. If you have questions please contact: Robert Kelliher or Frank Rose at DSS, 40 No. Pearl St., Albany, N.Y. 12243. They can be reached by calling (518) 432-2991 or 432-2988 respectively.

or

William Fealey (518) 473-6275, Room 2001 or Robert Dougherty (518) 474-2006, Room 1970, Department of Health, Empire State Plaza, Corning Tower.

Sincerely,

William E. Gould

## STATE OF NEW YORK

Department of Health

Department of Social Services

ASSISTED LIVING  
PROGRAM INFORMATION

The Assisted Living Program (ALP) will provide supportive housing and home care services to individuals who are medically eligible for placement in a nursing facility. Home care services may be paid for through a capitated Medicaid or private pay rate. Payment for the residential services may be through Supplemental Security Income (Level II) or private pay. In order to be approved as an Assisted Living Program, an entity must hold licenses as:

1. An adult home or enriched housing program, AND
2. A licensed home care services agency (LHCSA), OR  
A certified home health agency (CHHA), OR  
A long term home health care program (LTHHCP).

The following table shows the need for the Assisted Living Program for 1992 by HSA region. A regional approach to allocating need has been used instead of a county based approach because the estimates resulting from the long term care bed need methodology are very small in some counties and would not result in financially feasible programs.

TABLE 1

## Allocation of ALP Need by HSA Region - 1993

Western New York (HSA Region 1) (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming)	435
Finger Lakes (HSA Region 2) (Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates)	153
Central New York (HSA Region 3) (Cayuga, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence and Tompkins)	375
NY-Penn (HSA Region 4) (Broome, Chenango and Tioga)	94
Northeastern (HSA Region 5) (Albany, Clinton, Columbia, Delaware, Essex, Fulton, Franklin, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington)	340

Hudson Valley (HSA Region 6) (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester)	502
New York City (HSA Region 7) (Brooklyn, Bronx, Manhattan, Queens Richmond)	1,641
Nassau, Suffolk (HSA Region 8)	660
NEW YORK STATE	<u>4,200</u>

Assisted Living Programs will receive payment from two sources for residents who are Medicaid and Supplemental Security Income eligible. The following reimbursement parameters may be used to assist potential sponsors in evaluating the feasibility of an ALP:

RESIDENTIAL SERVICES - The residential services for low income residents will be paid for through Supplemental Security Income (SSI), Level II benefits. The 1992 SSI monthly benefits are \$857 downstate (New York City and Nassau, Suffolk, and Westchester counties) and \$827 in the rest of the State. Of this amount the resident is permitted to retain at least \$94 as a "personal needs allowance."

HOME CARE SERVICES - The Department of Health is in the process of calculating the initial Medicaid rates for the Assisted Living Program. These rates will be established for each Resource Utilization Group (RUGs) category for each of the sixteen Wage Equalization Factor regions in the state. Medicaid rates have been estimated for 1992. For the Physical A RUGs Category (the anticipated primary category) the estimated Medicaid per diem rates range from approximately \$30 in the rural areas of the State to \$33 in the Albany region and \$47 in New York City. The estimated Medicaid rates are available upon request from the New York State Department of Health, Division of Alternative Long Term Care Systems, Room 2001, Corning Tower, Empire State Plaza, Albany, New York 12237.

The Department of Social Services will have responsibility for general oversight of the Assisted Living Program although each of the component parts will be reviewed at application, and regulated by the appropriate Department. The Department of Health will review and regulate the licensed home care agency. In the Department of Social Services, the Division of Medical Assistance will review and oversee the home care services contract. The Division of Adult Services will review and regulate the adult home or enriched housing program.

Each agency will have surveillance responsibilities for its respective components of the program. The Departments will coordinate their surveillance and enforcement efforts including activities related to on-site surveys of the Assisted Living Programs. Enforcement actions by either agency could result in revocation of approval for the Assisted Living Program.

### Persons Eligible for the Assisted Living Program

1. Persons eligible for the Assisted Living Program include those people who:
  - a. are medically eligible for placement in a nursing facility but can be appropriately cared for in an Assisted Living Program. These people would require placement in a nursing facility if the Assisted Living Program was not available. Such individuals could include people who no longer have a home or for whom the home environment is not a suitable place in which to live and receive home care services safely. It is not the Department's intention to substitute the Assisted Living Program for existing and viable home care plans.
  - b. are categorized by the long term care patient classification system, (RUGs) as determined by the Patient Review Instrument and other assessment tools as a person who has a stable medical condition and is able to take sufficient action to assure self-preservation. Such action could be taken with the direction of others.
2. Appropriate persons would not include anyone in need of continual nursing or medical care, a person who is chronically bedfast or chairfast or anyone who is cognitively, physically or mentally impaired to a point where a resident's safety or the safety of others would be compromised. Residents in need of a wheelchair would not be precluded but should be able to transfer independently or with the help of one person.
3. It is anticipated that appropriate individuals would be classified primarily in the lower RUG categories particularly those categories that formerly would have been considered appropriate for placement in a health related facility (HRF).
4. The Commissioner of Health and Commissioner of Social Services will have the authority to develop rules and regulations regarding the establishment of additional criteria for determining the appropriateness of individuals for the ALP.

### Resident Assessment Process

1. A patient in a hospital or in the community is determined by the patient's physician to require nursing facility services.
2. The patient is informed of the Assisted Living Program as a possible resource for the provision of needed services. The names of ALPs in the area are provided to the patient if referral is elected by the patient. Referral to the program is completely voluntary on the part of the individual as is the selection of a particular program to which the individual is referred.
3. The Assisted Living Program conducts a brief screening to determine if the potential resident is definitely inappropriate for the program. Such persons would include those, among others, who have unstable medical conditions requiring continual nursing or medical care.

4. Based on the physician's orders, the ALP and the designated CHHA or LTHHCP conduct a joint assessment of the patient to determine appropriateness for the ALP. A nursing assessment will be conducted by a nurse from the CHHA or LTHHCP and designated staff of the ALP will conduct a social assessment. The assessment will be conducted using the Patient Review Instrument (PRI) and other designated assessment documents. A RUG category is determined for reimbursement purposes.
5. If either the ALP or the CHHA/LTHHCP determines that the patient is not appropriate for the program, the patient is informed that ALP placement is not feasible and other discharge/placement activities begin or continue.
6. (For Medicaid eligible residents) If the patient is determined to be appropriate for the ALP, the results of the assessment are sent to the fiscally responsible local Department of Social Services. The Social Services district reviews the assessment package and may conduct its own assessment of the potential resident. The Social Services district makes a determination on the appropriateness of the program for the individual and on the appropriateness of the RUG category as indicated by the PRI scoring.
7. If the Social Services district is in agreement with the assessment, a 45 day authorization for payment under the ALP is made. If the Social Services district does not agree that the person is appropriate for the ALP, the assessment package is forwarded to the local Professional Director for review and final determination. The Social Services district would notify the client of all decisions made either by the social services district itself or by the local Professional Director. Potential ALP residents who are not satisfied with the decision are afforded Fair Hearing rights under the Social Services Law.
8. If the person is determined to be appropriate for the ALP, a plan of care is jointly developed by the ALP and the CHHA/LTHHCP. The plan of care will reflect the physicians orders and the results of the assessment process. The plan will clearly specify the services to be provided, the frequency for provision and who is responsible for providing them. Personal care services will be provided by the ALP. In instances where there is no CHHA/LTHHCP attached to the parent, skilled services such as nursing and therapies will be provided by the CHHA/LTHHCP with which the ALP contracts. Other services may be arranged for by the ALP with other outside entities.
9. A reassessment of the patient must be jointly conducted by the ALP and CHHA/LTHHCP within 45 days of the initial authorization by the Social Services district. The reassessment process follows the same steps as the initial entry into the program and requires the Social Services district to make a further determination on the appropriateness of the program and the RUG category. The length of the authorization given by the Social Services district is related to the needs of the individual resident for follow-up reassessments but under no circumstances, may be longer than six months.

10. Amendments are made to the plan of care, if necessary, based on the changing needs of the individual and upon reassessment. If the resident's condition changes during the period between assessments such that the resident's RUG category changes, a reassessment will be conducted and approval sought from the Social Services district.

Payment for Assisted Living Program Services

1. The residential component will be paid for by the resident to the ALP. The resident may use SSI Level II benefits or make private payments.
2. The individual may pay for the home care services privately or if eligible, through the Medicaid program. A capitated Medicaid payment rate will be established using Department of Health nursing facility rate setting data for each of the Wage Equalization Factor (WEF) regions in the state. The capitated payment rate for the ALP will be equal to 50% of the amount that would have been expended for RHCF patients with the same RUG category in the same geographic area in which the ALP is located.
3. Services covered under the capitated payment will include:
  - a. Nursing
  - b. Personal Care
  - c. Home Health Aides
  - d. Therapies (PT,OT, Speech)
  - e. Medical supplies and equipment for which no prior approval is required
  - f. Personal Emergency Response Systems
  - g. Adult Day Health Care
4. The capitated rate is a daily price, not a cap and will be paid at the level determined by the appropriate RUG category for each day the resident is in the ALP. It is anticipated that the cost of care for some residents will be under the capitated payment and for others it will be over the capitated payment. The ALP will have the flexibility to balance its caseload and case mix.
5. The ALP may not discharge a resident because the cost of care, unrelated to a change in RUG category, exceeds the amount of the capitated payment.

Assisted Living Application Forms may be obtained by contacting:

Robert Kelliher  
Certification and Finance Unit  
Division of Adult Services  
NYS Department of Social Services  
40 North Pearl Street  
Albany, New York 12243

STATE OF NEW YORK

Department of Health

Department of Social Services

ASSISTED LIVING PROGRAM  
APPLICATION PROCESS

Definition

The Assisted Living Program (ALP) will provide supportive housing and home care services to individuals who are medically eligible for placement in a nursing facility. Home care services may be paid for through a capitated Medicaid or private pay rate. Payment for the residential services may be through Supplemental Security Income (Level II) or private pay. In order to be approved as an Assisted Living Program, an entity must hold licenses as:

1. An adult home or enriched housing program, AND
2. A licensed home care services agency (LHCSA), OR  
A certified home health agency (CHHA), OR  
A long term home health care program (LTHHCP).

Eligible Applicants

The entity authorized to operate an Assisted Living Program must be able to be certified as an adult care facility and as a home care provider. Because proprietary corporations cannot, by law, operate adult care facilities, applicants must be either a not-for-profit corporation or a public agency, or an individual or group of individuals acting as partners. Enriched Housing Programs are limited to not-for-profit corporations and public agencies.

These entities must either already hold the required certificates, or have appropriate applications in process, or requests such certification as part of the application for approval as an Assisted Living Program.

Program Application Process

The Department of Social Services will have responsibility for general oversight of the Assisted Living Program although each of the component parts will be reviewed at application and regulated by the Department currently responsible. The Department of Health will review and regulate the licensed home care agency. In the Department of Social Services, the Division of Medical Assistance will review and oversee the home care services contract. The Division of Adult Services will review and regulate the adult home or enriched housing program.

The Assisted Living Program application has been divided into schedules including: program, legal, financial, architectural and character/competence. Each schedule has been subdivided into numerically identified parts which relate to specific information required depending on the type of applicant. The attached chart should be used by each applicant to identify which application questions pertain to their application. Review of the application will determine whether there is a public need for

the program of the size which is planned; that the applicant is of good character and competence; whether the basic program design is sound and feasible; that the applicant is fiscally sound; and whether the applicant has the capability to effectively develop and run the proposed program.

If the application is approved, the applicant will be requested to submit a detailed program plan. Upon determination that the proposed program is in compliance with all requirements for an Assisted Living Program, authorization to operate will be issued.

#### Application Steps

1. Each individual partnership or agency seeking to develop an Assisted Living Program must submit to the New York State Department of Social Services an application for approval. Application forms may be obtained by contacting:

Robert Kelliher  
Certification and Finance Unit  
Bureau of Policy and Standards  
Division of Adult Services  
NYS Department of Social Services  
40 No. Pearl Street  
Albany, NY 12243

2. The Department will transmit to the applicant all forms necessary for completion of the application.
3. Applicants not already an existing adult home or enriched housing providers can apply by completing the appropriate sections of the application.
4. As required by 461.1 of Social Service Law, an Assisted Living Program must possess either: a valid license as a LHCSA, or a valid certificate of approval as a CHHA or valid authorization as a LTHHCP. Those organizations not currently licensed as home care providers who wish to obtain approval as a LHCSA can do so as part of this application.

If the Assisted Living Program applicant does not have a certified home health agency or long term home health care program for the provision of skilled services, a proposed agreement with an existing certified home health agency or long term home health care program for the provision of home care services and for participation in the assessment/reassessment process is necessary.

Those organizations seeking approval as a CHHA or LTHHCP to develop their Assisted Living Program will be required to file a separate application with the Department of Health to obtain such certification or authorization. Application forms for this purpose can be obtained by writing to:

New York State Department of Health  
Bureau of Home Care Services  
Empire State Plaza  
Corning Tower, Room 1970  
Albany, NY 12237

5. The applicant must include a proposed contract with the local social service district establishing the ALP as an authorized home care services provider. If an approved contract is not available for this initial submission of applications, a letter of intent from the local district may be substituted.
6. A detailed description of the proposed program including budgets, staffing and programmatic elements requested on forms provided by the Department is also required.
7. The applicant must complete the application including an architectural proposal, and return an original and five complete copies to:

Robert Kelliher  
Certification and Finance Unit  
Bureau of Policy and Standards  
Division of Adult Services  
NYS Department of Social Services  
40 No. Pearl Street  
Albany, NY 12243

If applying for licensure as a home care services agency, you will need to provide four additional copies of the following sections of the application as an attachment. If your proposal will serve more than one Health Systems Agency (HSA) region, please provide one additional copy of this Attachment for each HSA region proposed to be served.

- Schedule 1-1, 1-2, 1-4, 1-5
- Schedule 2-1, 2-2
- Schedule 5-1, 5-2, 5-3, . 5-4

8. In order for your application to be considered against the initial need of 4,200 beds, applications for the first round must be received no later than October 31, 1992. Staff at the Departments of Health and Social Services will respond to requests for information and assistance prior to September 30, 1992. Technical Assistance sessions will be conducted at the following locations:

Buffalo Location  
Thursday, August 20, 1992, 12:00 pm - 3:00 pm  
St. Paul's Cathedral  
128 Pearl Street  
Buffalo, NY 14202-4075

Syracuse Location  
Friday, August 21, 1992, 10:30 am - 1:30 pm  
Onondaga County Department of Social Services  
421 Montgomery Street  
Civic Center  
13th Floor Conference Room  
Syracuse, NY 13202

Albany Location

Tuesday, August 25, 1992, 10:00 am - 1:00 pm  
New York State Department of Health  
Wadsworth Center for Laboratories and Research  
Empire State Plaza  
P.O. Box 509  
Albany, NY 12201-0509

Nassau Location

Wednesday, August 26, 1992, 10:00 am - 1:00 pm  
Nassau County Department of Social Services  
1st Floor Auditorium  
County Seat Drive  
Mineola, NY 11501

Westchester Location (White Plains)

Thursday, August 27, 1992, 10:00 am - 1:00 pm  
Westchester County Department of Social Services  
85 Court Street Basement  
White Plains, NY 10601

9. Upon receipt of these materials, the Department of Social Services will distribute the application to the applicable reviewing units within DSS and DOH. Applications will be screened for completeness and to determine if the technical requirements for the application have been met. These applications which meet the technical requirement will be further reviewed. Each department will review the application with regard to the aspects of the program for which it has specific oversight responsibilities including:
  - a. The Department of Social Services must be satisfied regarding the aspects of the program relating to the adult home or enriched housing program including the public need for the program, the character, competence and standing in the community of the operator, the compliance history of existing operators, the financial feasibility of the program and such other matters as deemed pertinent by the Commissioner.
  - b. If there is a licensed home care services agency component, the Department of Health must be satisfied that the proposed provider meets all regulatory criteria for such licensure.
10. Those applications which meet the technical requirements will be evaluated with regard to the criteria established by the Commissioner, including public need, financial feasibility, character and competence and program and with regard to the preference criteria for low income participants, new resources, and their ability to quickly commence provision of services.
11. Each applicant shall be notified, in writing, of the decision to approve or disapprove the application. In the event of an unfavorable determination, the applicant will be advised of administrative and/or legal remedies available, should the applicant wish to appeal the decision.

12. The granting of approval does not signify permission for the applicant to begin operation of an Assisted Living Program. Upon notification by the Department that approval has been granted, the applicant will have a period of time (120 days for non-construction; 18 months for construction) during which to undertake those actions necessary to ready the program and program site for the commencement of operation. If the applicant determines that additional time is needed to complete program preparation, an extension may be requested.
13. Upon notice of the date of anticipated opening, the Departments of Health and Social Services will schedule pre-opening surveys.
14. Upon determination that the applicant has satisfied all the requirements contained in the applicable regulations, the applicant shall be issued authorization to operate an Assisted Living Program. Such approval shall be issued for a period of not more than 4 years. It may be renewed, shall be nontransferable, and may be limited, suspended or revoked by the Department in the event that the operator fails to continue compliance with program regulations.

Application Schedules:

Section 1 -- Applicant Identification

Section 2 -- Legal Requirements

Section 3 -- Financial Information

Section 4 -- Architectural

Section 5 -- Character and Competence

The attached chart indicates which schedules must be completed for the various types of adult care facility applicants.