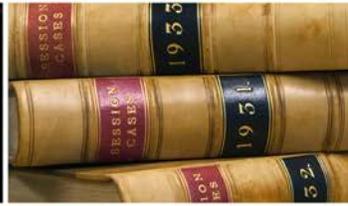
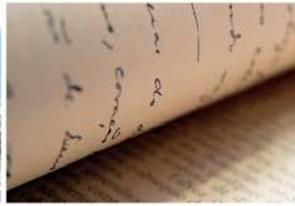




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U.S. Assisted Living Smoke-free Regulations: Frequently Asked Questions

This publication provides answers to several common questions about assisted living residences, including adult foster care homes and facilities, and policies to address tobacco use and secondhand smoke exposure in these settings.¹ For more information about tobacco policies in residential settings for vulnerable populations, check out the publications and resources on the Public Health Law Center’s website at www.publichealthlawcenter.org.

Q: What are assisted living residences? How do they differ from nursing homes?

A: States vary in the terms they use for “assisted living residences,” as well as the populations they serve, assistance they provide, and ways they are regulated, certified or licensed. In general, most assisted living residences are licensed or certified living arrangements that provide mentally or physically impaired, elderly or ailing adults around-the-clock support, including food, lodging, supervision and household services, both in corporate adult foster care facilities and in private residences.² Unlike nursing homes, which are regulated by the federal government and require 24/7 on-site nursing staff, assisted living residences are regulated by state governments and typically do not require onsite professional medical care. Some residences have specially designated facilities for residents suffering from memory issues or other impairments.



Q: What is “adult foster care”?

A: At least thirty-eight states license or certify some type of assisted living, typically provided in a private residence that is known by a variety of terms, but most commonly as “adult foster care.” With this arrangement, either the owner or a paid caregiver lives with vulnerable adults who receive personal care and other supportive services. States generally limit the number of residents in an adult foster care home and restrict the type of services to meals, assistance with personal care, and supervision.

Q: How are assisted living residences regulated? Do they need to comply with federal laws regarding housing?

A: Assisted living residences must comply with all applicable federal and state regulations, including the Americans with Disabilities Act, the Fair Housing Act, and fire and safety regulations. Also, assisted living residents who live in federal public housing, with the exception of dwelling units in mixed-finance buildings and Section 8 housing, will need to comply with the Department of Housing and Urban Development's upcoming smoke-free requirement.³ The new HUD rule prohibits lit tobacco products in all living units, indoor common areas, administrative offices, and outdoor areas within 25 feet of housing and administrative office buildings.

Q: When will HUD's smoke-free requirements take effect?

A: HUD is currently reviewing public comments submitted on its proposed smoke-free rule. Once HUD has completed its review, the final rule will undergo executive agency clearance, and then the rule will be posted. After that, public housing authorities will have up to 18 months to implement smoke-free policies. In the interim, rather than waiting for the federal rule to take effect, public housing authorities can implement their own tobacco-free requirements and assisted living providers can take steps to make this transition as smooth as possible for their residents.

Q: What is the typical population for assisted living residences?

A: Because assisted living residences vary so much by state, it's difficult to describe a "typical" resident. In general, most adults in assisted living have some sort of functional impairment that makes it challenging for them to live independently without a minimum amount of assistance with personal care. Residents may have a variety of conditions, including mental illness (that is, a diagnosable mental health, behavioral or emotional condition); physical or cognitive impairments and disabilities; age-related neurological diseases, such as Alzheimer's or dementia; or brain injury traumas.

Q: What are the average costs of assisted living residences? Are these residences typically covered under Medicare or Medicaid?

A: The costs of assisted living residence vary, depending on the state and level of care required. Costs are typically less than nursing homes, which require high levels of supervision and on-site nursing care 24 hours a day. One estimate of the annual median cost of assisted living facilities in 2015 was approximately \$43,200, or roughly \$3,600 a month.⁴

As a general rule, Medicare is not set up to cover care or services that are not medically necessary, which would include many services and amenities offered at most assisted living facilities.⁵ Medicaid is designed to provide health insurance to those who require financial assistance, and is paid for by federal and state funds.⁶ Eligibility for Medicaid varies from state to state. Medicaid reimbursement rates are usually established by the state and not the assisted living facility or nursing home, and these rates are often set at a lower rate than what would be paid by other insurance sources. In essence, this means that many assisted living facilities will not accept Medicaid patients and most state Medicaid programs will not pay for assisted living.

Q: How many states include assisted living residences or similar types of settings in their smoke-free or clean indoor air acts?

A: Although eleven states include assisted living residences (or adult foster care equivalents) in their smoke-free laws, all but three of them (Massachusetts, Michigan and Montana) allow smoking in designated areas of these residences.⁷ In the case of Massachusetts, state law prohibits smoking in all indoor areas of workplaces. “Workplace” is defined as an indoor area, structure, facility or portion of such areas, at which one or more employees perform a service for compensation for the employer. “Assisted living homes” are not included in the definition of “lodging homes” or “residence,” which are exempted from the smoke-free law.

Q: Approximately how many residents in assisted living are nicotine dependent?

A: Because of the different ways in which assisted living is defined across the U.S., this is a tricky question to answer. Many residents in assisted living settings suffer from mental illness or developmental disabilities – a population that in the U.S. as a whole is disproportionately nicotine-dependent.⁸ (Studies continue to show that approximately one out of three adults with mental illness smoke cigarettes, twice as much as the general population.)⁹

Q: What types of smoking policies are common in assisted living residences?

A: Policies range from prohibiting all smoking inside the residences or on the premises to permitting smoking in designated enclosed and ventilated areas, such as “common areas” or “smoking rooms.” Most policies allow smoking outside on the grounds, although states may have issues establishing outdoor boundaries, such as ensuring that smokers do not use adjacent garages. Some states allow smoking in these settings if an assisted living resident has a written authorization from a physician, or if the resident is not in an area where combustible supplies, materials, liquids or gases are in use or stored. At least one state (Washington) allows adult foster care providers to video monitor and record activities, without an audio component, in designated smoking areas inside the homes, as long as residents are assessed as needing supervision for smoking.

Q: Who enforces smoking regulations in these residences?

A: Smoking regulations in assisted living residences are typically enforced by the providers and staff. In a state like Montana, where adult foster care homes are required by statute to be smoke-free, state case workers make unannounced site visits to the residences and cite providers that are not in compliance with the smoke-free requirement.

Q: What common obstacles do assisted living providers face in enforcing smoking policies?

A: Because of limited resources and staff, it is often difficult to monitor residents who smoke, particularly when they need to be escorted outside for smoke breaks at night or in inclement weather. Staff and resident resistance and subterfuge in avoiding compliance may occur initially in some provider settings, but over time smoke-free policies tend to be accepted. Other issues include the lack of tobacco cessation resources and funding for residents and staff, the need for

any new smoke-free policy to be implemented gradually so residents and staff have time to adjust to it, and the concern that all smoke-free requirements be applied equitably and consistently to staff, visitors and residents.

Q: Is nicotine replacement therapy risky or dangerous to residents with chronic health conditions, such as diabetes and high blood pressure, or mental health disorders?

A: Under a doctor's direction, nicotine replacement therapy can be used safely by people with all sorts of chronic health or mental health conditions. Tobacco users with health issues should take care to work with a primary care physician or mental health professional, as well as an addiction specialist, who can monitor their progress to ensure that quitting smoking does not interfere with their other medications and treatment plans.

Q: Are assisted living residents typically eligible for nicotine reduction therapy (NRT) services through Medicaid?

A: Although Medicaid is an important source of financing for services provided in residential care settings and some assisted living settings, state Medicaid programs vary in their coverage of tobacco cessation (counseling and nicotine reduction therapy) products and related services.¹⁰ Residents should consult with their doctors, health care providers, or other social service professionals regarding their eligibility for Medicaid coverage of tobacco cessation products and services.

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Notes

¹ This publication was prepared as part of a 2014-16 research grant (RC-2014-0017), funded by ClearWay MinnesotaSM. Please note that the information contained in this document is not intended to constitute or replace legal advice.

² Some states use the term "assisted living" in a broad sense to include settings where residents may have nominal impairments, requiring only minimal assistance or supervision.

³ See Public Health Law Center webpage, <http://publichealthlawcenter.org/topics/tobacco-control/smoke-free-tobacco-free-places/housing/public-subsidized-housing> (including resources on HUD's proposed smoke-free rule) (2016).

⁴ GenWorth, *Compare Long Term Care Costs Across the United States* (April 2015) (interactive map of state-by-state assisted living costs, conducted by CareScout[®]), <https://www.genworth.com/corporate/about-genworth/industry-expertise/cost-of-care.html>.

⁵ See Centers for Medicare & Medicaid Services, Medicare.Gov (federal government website), <https://www.medicare.gov>.

⁶ *Id.*

⁷ See Public Health Law Center, *U.S. Assisted Living Residence Smoke-free Regulations: A 50-State Summary Chart* (2016).

⁸ Public Health Law Center interviews with adult foster care/assisted living providers in six states confirmed that tobacco use is a common problem among assisted living residents (and staff) in these jurisdictions. See Public Health Law Center, *Tobacco-free Assisted Living Residences*. See Public Health

Law Center resources on tobacco-free assisted living resources,

<http://www.publichealthlawcenter.org/resources/tobacco-free-assisted-living-resources-2016>.

⁹ See, e.g., Aniyizhai Annamalai et al., *Smoking Use and Cessation Among People with Serious Mental Illness*, 88 YALE J. BIOLOGY & MEDICINE 271-22 (2015) (citing several recent studies of cigarette smoking among adults with mental illness).

¹⁰ See Tobacco Cessation, Medicaid.Gov (federal government website),

<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Tobacco.html>.