



New Mexico Health Care Association New Mexico Center for Assisted Living

Your Association ... Your Decisions ... Your Directions



2025 Proposed Rule 8.370.14.1 NMAC

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8.370.14.7 DEFINITIONS

These new terms reflect expanded regulatory scope, particularly memory care, person-centered care, and operational clarity.

1. **"Adult Day Care" (Proposed A):** "Services provided to adults who do not reside in the facility during daytime hours, which may include social activities, meals, and assistance with activities of daily living."
2. **"Assisted Living Facility with Memory Care Unit" (Proposed C):** "A distinct area of an assisted living facility designed for residents with cognitive impairments requiring specialized care and a secure environment."
3. **"Change of Ownership" (Proposed G):** "A transfer of controlling interest in the facility, including sale, lease, or dissolution of the current ownership entity."
4. **"Instrumental Activities of Daily Living (IADLs)" (Proposed I):** "Activities related to independent living, such as managing finances, shopping, meal preparation, and transportation, as defined in 42 CFR 441.505 (2016)."
5. **"Life Safety Code (LSC)" (Proposed L):** "The National Fire Protection Association (NFPA) 101 Life Safety Code, 2021 edition, as adopted by this rule."



8.370.14.7 DEFINITIONS

6. **"Mini Mental Status Exam (MMSE)" (Proposed M): "A standardized tool used to assess cognitive impairment, as referenced in admission criteria for memory care units."**
7. **"Person-Centered Care" (Proposed P): "An approach to care that respects and responds to the individual preferences, needs, and values of residents, ensuring these guide all care decisions."**
8. **"Ancillary Services" (Proposed A): "Services provided beyond basic care, such as therapy or transportation." Broadens care scope (8.370.14.21).**
9. **"Communicate" (Proposed G): "The ability to express needs or understand instructions." Ties to memory care needs (8.370.14.22).**

8.370.14.7 DEFINITIONS

11. "Abuse" (Old A vs. Proposed A):

- ❖ Old: "The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish."
- ❖ Proposed: "Physical abuse, sexual abuse, emotional or psychological abuse, verbal abuse, neglect, or exploitation as further defined in 8.370.9 NMAC, including willful infliction of injury, unreasonable confinement, intimidation, or punishment resulting in physical harm, pain, or mental anguish."

12. • "Activities of Daily Living (ADLs)" (Old B vs. Proposed B):

- ❖ Old: "Basic personal tasks including bathing, dressing, eating, toileting, transferring, and walking."
- ❖ Proposed: "Basic personal everyday activities as defined in 42 CFR 441.505 (2016), including bathing, dressing, eating, toileting, transferring, walking, general hygiene, and mobility."

8.370.14.7 DEFINITIONS

13. "Administration of Medication" (Old C vs. Proposed A sub-definition):

- ❖ Old: "The act of giving medication to a resident by a person authorized by law."
- ❖ Proposed: "The process by which medications are given to a resident by an individual licensed by the New Mexico Board of Nursing, following a prescribed order, as classified by the Nursing Intervention Classification (NIC)."

14. "Continuous Nursing Care" (Old K vs. Proposed H):

- ❖ Old: "Nursing services provided 24 hours per day to residents who require constant medical monitoring or intervention due to acute or chronic conditions."
- ❖ Proposed: "Nursing services provided 24 hours per day based on the complexity of residents' medical needs."



8.370.14.7 DEFINITIONS

15. "Exploitation" (Old Q vs. Proposed M sub-definition):

- ❖ Old: "The illegal or improper use of a resident's funds, property, or resources for another's profit or advantage."
- ❖ Proposed: Under "Misappropriation/Exploitation": "The illegal or improper use of a resident's funds, property, or resources, including: (a) theft; (b) coercion; (c) fraud; (d) undue influence; (e) misrepresentation; (f) failure to safeguard assets."

16. "Health Care Professional" (Old V vs. Proposed H):

- ❖ Old: "A physician, physician assistant, nurse practitioner, or registered nurse licensed in New Mexico."
- ❖ Proposed: "A physician, physician assistant, advance practice registered nurse, or registered nurse licensed in New Mexico."



8.370.14.7 DEFINITIONS

Removed Definitions

- 18. "Non-mobile" (Old AA): "A resident who is unable to leave a building unassisted under emergency conditions."
- 19. "Nurse Monitoring" (Old AC): "Observation by a nurse of a resident's condition."
- 20. "Self Care" (Old BJ): "The ability of a resident to perform ADLs without assistance."

Renamed Definitions

- 21. "Medication Assistance Record" (Old Z) → "Medication Administration Record" (Proposed M):
- 22. "Qualified service animal" means any qualified service dog or qualified service miniature horse (*where reasonable*) that has been or is being trained to provide assistance to an individual with a disability. "Qualified service animal" does not include a pet, an emotional support animal, a comfort animal, or a therapy animal;



NMHCA/NMCAL Suggested DEFINITIONS

“Assistance with medication” means support provided to residents to assist them with medication delivery by non-licensed or non-certified paid staff and does not allow for the assessment of the effects of the medication. assisting resident based on clear and concise orders transcribed on the Medication Assistance Record. Must have express written consent of the resident or family to assist with medications.

“Current Written Consent: Means a written informed consent form that identifies the type of medication delivery and the assistance or administration the individual requires that is signed by the individual/guardian/surrogate health decision maker. Consents must be signed at least annually and when there is any change in the individual’s functional ability or the family designee.

Electronic Records (EMR) - real-time, resident-centered records that make information available instantly and securely to authorized users.

Emergency Admission - an unplanned, often urgent admission, often via adult protective services, which occurs when a resident is admitted at the earliest possible time, often delaying normal admissions procedures.



NMHCA/NMCAL Suggested DEFINITIONS

Incident - an event involving a resident that occurs causing harm or illustrates a potential for harm and requires an intervention

Follow-up – a report provided to the licensing agency 5 days after the report of an incident that outlines actions taken by the facility in response to the incident

Family Designee – An individual or group of individuals designated by the family/power of attorney to assist the resident in taking their when they are no longer able to self-administer.

Unusual Event - An event that results in injury as a result of failing to follow the care plan or facility policy. Any assault: physical, sexual, or verbal. Any injury related to equipment not working due to maintenance issues, such as failure to change or charge batteries. Burns to a resident. Elopements where the resident is gone for more than 15 minutes and/or sustains injuries. Injuries involving severe and/or multiple fractures, especially fractures of "unknown origin"



8.370.14.8 GENERAL LICENSING REQUIREMENTS

B Application for Licensure

- ❖ Old: "An initial or renewal application shall be made on the forms prescribed by and available from the licensing authority."
- ❖ New: "An initial or renewal application shall be made on the forms (paper or electronic) prescribed by and available from the licensing authority."

(2) Application and fee

- ❖ Old: "the completed and notarized application and the appropriate non-refundable fee(s);"
- ❖ New: "the completed application and the appropriate non-refundable fee(s);"

(6) Organizational documents

(c) Partnership or changes

- ❖ Old: "any changes in ownership or management shall be reported to the authority within thirty (30) days;"
- ❖ New: "in cases in which the owner is organized as a partnership, the identity of each partner and a copy of the partnership agreement."



8.370.14.8 GENERAL LICENSING REQUIREMENTS

B Application for Licensure (Continued)

(7) New item in "New"

- ❖ Old: (Not present)
- ❖ New: "a statement from the administrator of the facility, acknowledging that the facility is responsible for any funds that are handled for the residents by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten working days for lost or stolen funds will result in non-renewal of licensure, or other sanctions;"

(8): Updated reference from "8.370.14.41 NMAC" to "8.370.14.42 NMAC."

(9): Updated reference from "8.370.14.60 NMAC" to "8.370.14.61 NMAC."

(13) Additional information

- ❖ Old: "any other information that the applicant wishes to provide or that the licensing authority may request."
- ❖ New: "copy of appropriate drug permit issued by the state board of pharmacy, if applicable: and"

(14) New item in "New"

- ❖ Old: (Not present)
- ❖ New: "any other information that the applicant wishes to provide or that the licensing authority may request."



8.370.14.8 GENERAL LICENSING REQUIREMENTS

C. Application for amended license (Old) / Annual license (New)

- ❖ Old: "Application for amended license. A licensee shall submit an application for an amended license and the required non-refundable fee to the licensing authority prior to a change with the facility. An amended license is required for a change of: location, administrator, facility name, capacity or any modification or addition to the building."
- ❖ New: "Annual license: An annual license is issued for one year for a facility that has met all the requirements of this rule."

F. Change of Ownership (New Addition)

- ❖ Old: Not present. (Moved to G)
- ❖ New (8.370.14.8.F): Adds an entirely new subsection detailing requirements for a change of ownership, including a letter of intent, evidence of the change, building plans, a continuity of care transition plan, and notifications.



8.370.14.9 WAIVERS AND VARIANCES

A.(5) Justification

- ❖ Old: justification that the goal or purpose of the rule would be satisfied."
- ❖ New: justification that the goal or purpose of the rule would be satisfied with a waiver or variance."

NMHCA/NMCAL Recommendations

Provide a waiver of the three-resident limit on temporary licensure for providers who own and operate multiple facilities in New Mexico provided the owners/operators have maintained significant compliance with the state regulations in the other homes.



8.370.14.11 SURVEY OR MONITORING VISITS

A. On-site survey or monitoring visits

- ❖ Old: "The licensing authority shall perform on-site survey or monitoring visits at all assisted living facilities to determine compliance with this rule."
- ❖ New: "The licensing authority shall perform unannounced on-site survey or monitoring visits at all assisted living facilities to determine compliance with this rule."

B. Access to facility operations

- ❖ Old: "The facility shall provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility."
- ❖ New: "The facility shall provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility. This includes interviews with facility staff. The facility shall develop and implement written policies and procedures that promote a culture of safety, open communication in the work environment, including prohibiting retaliation against an employee who cooperates with the survey process and interviews."



8.370.14.11 SURVEY OR MONITORING VISITS

D. Failure to provide access

- ❖ Old: "Failure by the facility to provide the licensing authority access to the premises or information, including resident records, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, as deemed appropriate by the licensing authority."
- ❖ New: "Failure by the facility to provide the licensing authority access to the premises or information, including resident records and interviews with any party with relevant information, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, in accordance with 8.370.4 NMAC, as deemed appropriate by the licensing authority. Impeding the survey or investigation includes the following:"
 - 1) Failure to provide records
 - "(1) Failure of the facility to provide resident records, medical records, staff records, or other records necessary for the survey process. The facility must make available a printout of any record or part of a record upon request in a timeframe that does not impede the survey process."
 - "(2) Failure of the facility to provide records. Undue delays in the production of records are unacceptable."



8.370.14.12 CORRECTIVE ACTION

A. Informal dispute review (IDR)

(4) Availability of IDR operating rules

- ❖ Old: "(4) A copy of the "IDR operating rules" is available upon request."
- ❖ New: "(4) A copy of the "IDR operating rules" is available upon request or by accessing the DHI website."

B. Plan of correction (POC)

(1) Handling of the POC

- ❖ Old (8.370.14.12.B.(1)): "(1) If the first plan of correction (POC) is rejected by the licensing authority, the facility will be sent a second (2nd) copy of the statement of deficiencies. The facility shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The process will repeat until an acceptable plan of correction is received by the authority."
- ❖ New (8.370.14.12.B.(1)): "(1) The licensing authority may either accept, direct or reject a plan of correction (POC)."

(2) Resubmission of POC

- ❖ Old: "Failure to provide an acceptable plan of correction (POC) within a reasonable period of time, may lead to civil monetary penalties or other sanctions."
- ❖ New: "If the first POC is rejected by the licensing authority, the facility will be sent a second copy of the statement of deficiencies. The facility shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The process will repeat until an acceptable plan of correction is received by the authority."



8.370.14.12 CORRECTIVE ACTION

B. Plan of correction (POC)

(3) Consequences of failure

- ❖ Old: "The plan of correction shall: [followed by (a), (b), (c)]"
- ❖ New: Failure to provide an acceptable plan of correction within a reasonable period of time, may lead to civil monetary penalties or other sanctions."

"(6) The licensing authority may accept, reject, or direct the plan of correction."

- ❖ New: [Not present as a separate item; content moved to New B.(1).]
- ❖ Change (8.370.14.12.B.(6)): Removed as a standalone subsection in New; content rephrased and relocated to New B.(1) as "The licensing authority may either accept, direct or reject a plan of correction (POC)."



8.370.14.16 STAFF QUALIFICATIONS

A. Administrator, director, operator

- ❖ Old: "an assisted living facility shall be supervised by a full-time administrator. Multiple facilities that are located within a 40-mile radius may have one full-time administrator. The administrator shall:"
- ❖ New: "an assisted living facility shall be supervised by a full-time on-site administrator. Multiple facilities that are located within a 40-mile radius may have one full-time administrator. The administrator shall:"

(4) Certification requirement

Old: "complete a state approved certification program for assisted living administrators;"

New: "complete a state approved certification program for assisted living administrators, or a current license as a nursing home administrator (NHA)."

(8) References

Old: "provide three notarized letters of reference from persons unrelated to the applicant;"

New: "provide three letters of reference from persons unrelated to the applicant;"



NMHCA/NMCAL Recommendations

A.4

We are requesting the Department provide criteria for the certification program so that administrators are better prepared. By outlining minimum standards for the certification program, the Department will set the level expected in training programs and increase the caliber of administrator.

Add language to allow for specific licensure in lieu of the state-approved certification program. We recommend including those licensed/certified as AL Administrators in other states, Nursing Home Administrators (NHAs), Health Services Executives (HSEs), and RNs, Social Workers, and/or other degreed licenses with 1-2 years of experience in long-term care.

In addition, twelve (12) hours of continuing education annually should be considered to keep administrators up to date providing quality care for residents.



8.370.14.17 Staff Training No Changes NMHCA/NMCAL Recommendations

Requiring training on the same material annually does not address the needs of the staff or the residents. NMHCA/NMCAL suggests separating initial orientation training from the annual requirements. Many of the 12 requirements, while needing to be modified, are more appropriate for initial training opportunities. Some would be appropriate for annual training refreshers, but requiring all as annual training pieces would discourage the use of more relevant training opportunities, especially given that currently, Assisted Living providers must up to 30 hours of training each year. Replacing the current list of annual training requirements with language that requires training to address the needs of the individuals would better serve the residents.

We suggest using the language “At least twelve (12) hours of training with proof of competency shall be provided at orientation and must include but is not limited to the following

- (1) emergency procedures, fire safety, and evacuation training;
- (2) first aid;
- (3) safe food handling practices (for persons involved in food preparation), per the environmental department rule (cite);
- (4) infection control;
- (5) resident rights;
- (6) reporting requirements for abuse, neglect or exploitation in accordance with 7.1.13 NMAC;
- (7) Facility policies for staff, residents and visitors;
- (8) Methods for providing effective, safe, efficient, patient-centered, equitable, and timely quality resident care;
- (10) Medication assistance, including the certificate of training for staff that assist with medication delivery;
- (11) the proper way to implement a resident ISP for staff that assist with ISPs;
- (12) confidentiality of records and resident information; and
- (13) training per the dementia training act (cite).

At least twelve (12) hours of training annually with proof of competency as identified through in-service training to address individual areas of weakness that are determined by aides' performance reviews and the unique needs of a facility's resident population.



8.370.14.17 Staff Training No Changes NMHCA/NMCAL Recommendations

B.2

Define or eliminate the term adequate education as it allows for subjective interpretation, which can be problematic when there is turnover in the oversight agencies.

8.370.14.18 POLICIES

Old: F. medication administration:

New: F. medication administration and assisting with self-administration of medication:

8.370.14.19 Staffing Ratios – No Change

NMHCA/NMCAL Recommendations

NMHCA/NMCAL recommends increasing staffing ratios to a 1-16 ratio. The language at 8.370.14.19.A “sufficient number of staff to provide the basic care, resident assistance...” provides for the enforcement of necessary increases in staff when residents require. Facilities serving more independent residents may not need 2 staff at 16 residents, while facilities serving residents with more ADL support may need 2.

Or, in lieu of changing the language, NMHCA/NMCAL requests language to allow facilities and to share staff between units. Currently, a facility at 100% occupancy with 5 15-bed units/buildings on one campus would need 10 staff members during waking hours, but a single building with similar square footage with 75 residents would only need 5 staff members. Another scenario would be a CCRC where residents may be more independent and staffing is available to assist at all time from other licensed areas.

Again, 8.370.14.19.A, would provide for enforcement of required staff increases.



8.370.14.20 Admissions and Discharge No Changes NMHCA/NMCAL Recommendations

A

Address emergency admissions and processes by including a day of admission criteria. Allow for exceptions to the requirements for admissions for a set period of time, specifically, the assessment requirement.

B.3

The IV and injection restriction hinders the choices of residents who require assistance with injectable medications. Home infusion pumps for therapy services are available and would allow residents to “age in place,” and insulin dependent residents should not be denied choice or be forced to pay for someone else to come inject medications. With training and family delegation, insulin pens should be allowed as part of the assisting with medication programs. This is not a novel concept in NM as the school system allows for non-nurses to administer insulin to students where a nurse is not present, <https://www.srca.nm.gov/parts/title06/06.012.0011.html>, and Nevada, a state with similar challenges, allows for trained caregivers in assisted living to provide necessary injections utilizing insulin pens, <https://www.leg.state.nv.us/nrs/NRS-449.html#NRS449Sec017>.

The term Hoyer refers to a brand name; change to mechanical. It is also recommended this be removed from the list as it doesn't require 24-hour nursing services.



8.370.14.21 RESIDENT RECORDS

A. Record contents

(9)

- ❖ Old: "the medication assistance record (MAR); the MAR is the document that details the resident's medication; the MAR shall include all of the information pursuant to Subsection G of 8.370.14.35 NMAC of this rule;"
- ❖ New: "the medication administration record (MAR); the MAR is the document that details the resident's medication; the MAR shall include all of the information pursuant to Subsection G of 8.370.14.35 NMAC of this rule;"

8.370.14.21 RESIDENT RECORDS

NMHCA/NMCAL Comments

A. Record contents (11)

Copies of transfer agreements are not always available from 3rd parties. Eliminate and replace with discharge summary.



8.370.14.22 FACILITY REPORTS, RECORDS, RULES, POLICIES AND PROCEDURES

D. Policies and procedures

(24)

❖ Old: Not present

❖ New: “infection control; the policies shall identify the nationally or state recognized guidelines upon which the policies are based. The policies and procedures shall include at a minimum, all of the following criteria:

- (a) ensure a safe and sanitary environment for residents and personnel,
- (b) the method for tracking infection and initiating a response,
- (c) the method for determining when to seek assistance from a medical professional or the local health department,
- (d) isolation techniques, and
- (e) appropriate handling of linen and clothing of residents with communicable infections. Any item containing blood, body fluid, or body waste from a resident with a contagious condition shall be presumed to be infectious waste and disposed of in accordance with the state's infectious waste disposal requirements, 20.9.8.13 NMAC (8/2/2007).



8.370.14.22 FACILITY REPORTS, RECORDS, RULES, POLICIES AND PROCEDURES

NMHCA/NMCAL Comments

A. Reports and Records

(8)

Many facilities offer choices of snacks throughout the day. Allow for the separate posting and record for the snack choice list or always available options.



8.370.14.23 Pets No Changes NMHCA Recommendations

❖ Subsection K of 7.6.2.9 NMAC is related to mobile food establishments.

8.370.14.25 RESIDENT EVALUATION

C.

(1)

❖Old: "activities of daily living;"

❖New: "activities of daily living including:

(a) toileting pattern, bowel, and bladder control;

(b) dressing, grooming, bathing, and personal hygiene;

(c) mobility, including ambulation, transfers, and assistive devices; and

(d) eating, dental status, oral care, and assistive devices and dentures, if applicable."

8.370.14.25 RESIDENT EVALUATION

C.

(15)

❖ Old: "medication use and level of assistance needed with medications;"

❖ New: "medication use including prescriptions, over-the-counter medications, and supplements, and for each:

(a) the reason taken;

(b) any side effects, contraindications, allergic or adverse reactions, and actions to address these issues;

(c) the dosage;

(d) the frequency of use;

(e) the route administered or taken;

(f) any difficulties the resident faces in taking the medication;

(g) whether the resident self administers the medication;

(h) the resident's preferences in how to take medication;

(i) interventions needed in management of medications to prevent diversion of medication by the resident or others who may have access to the medications; and

(j) provide instructions to the resident and resident's legal or designated representatives on interventions to manage the resident's medications and prevent diversion of medications."



8.370.14.25 RESIDENT EVALUATION

C.

(18)

- ❖ Old: Not Included
- ❖ New: instrumental activities of daily living, including:
 - (a) ability to self manage medications;
 - (b) housework and laundry; and
 - (c) transportation.

(19)

- ❖ Old: Not Included
- ❖ Risk indicators, including:
 - (a) risk for falls including history of falls;
 - (b) emergency evacuation ability;
 - (c) complex medication regimen;
 - (d) risk for dehydration, including history of urinary tract infections and current fluid intake pattern;
 - (e) risk for emotional or psychological distress due to personal losses;
 - (f) unsuccessful prior placements;
 - (g) elopement risk including history or previous elopements;
 - (h) smoking, including the ability to smoke without causing burns or injury to the resident or others or damage to property; and
 - (i) alcohol and drug use, including the resident's alcohol use or drug use not prescribed by a physician.

8.370.14.29 Transportation – No Change NMHCA/NMCAL Recommendations

A.

(1)

Clarification around the standards for passenger assistance training are needed.

8.370.14.29.A.1 needs to be clarified because reviewing actual resident records during training doesn't address the necessity of knowing the residents being transported. We recommend changing to "discussion of the importance of viewing the resident evaluation(s) of every resident being transported;"

Many surveyors have required facilities use the state-approved course when they utilize vans and vans with lifts, but this requirement is not in the rule. NMHCA/NMCAL suggest adding language that ensures these individuals are properly trained.



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

Entire Section is New

The assisted living facility must comply with all federal, state and local emergency preparedness requirements (42 CFR 483.73). The assisted living facility must establish and maintain an emergency preparedness program that meets the requirements of this section. The emergency preparedness program must include, but not be limited to the following elements:

A. Emergency plan: The assisted living facility must develop and maintain an emergency preparedness plan that must be reviewed and updated at least annually. The plan must do all of the following:

- (1) Be based on and include a documented, facility-based and community-based risk assessment, utilizing an all-hazards approach, including missing residents.
- (2) Include strategies for addressing emergency events identified by the risk assessment.
- (3) Address resident population, including, but not limited to, persons at-risk; the type of services the assisted living facility has the ability to provide in an emergency; and continuity of operations, including delegations of authority and succession plans.
- 4) Include a process for cooperation and collaboration with local, tribal, regional, state, or federal emergency preparedness officials' efforts to maintain an integrated response during a disaster or emergency situation.



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

B. Policies and procedures: The assisted living facility must develop and implement emergency preparedness policies and procedures, based on the emergency plan set forth in Subsection A of 8.370.14.31 NMAC, risk assessment at Paragraph (1) of Subsection A of 8.370.14.31 NMAC, and the communication plan at Subsection C of 8.370.14.31 NMAC. The policies and procedures must be reviewed and updated at least annually. At a minimum, the policies and procedures must address the following:

- (1) The provision of subsistence needs for staff and residents, whether they evacuate or shelter in place, include, but are not limited to the following:
 - (a) food, water, medical, and pharmaceutical supplies;
 - (b) alternate sources of energy to maintain;
 - (i) temperatures to protect resident health and safety and for the safe and sanitary storage of provisions;
 - (ii) emergency lighting;
 - (iii) fire detection, extinguishing, and alarm systems; and
 - (iv) sewage and waste disposal.
- (2) A system to track the location of on-duty staff and sheltered residents in the assisted living facility's care during and after an emergency. If on-duty staff and sheltered residents are relocated during the emergency, the ALF facility must document the specific name and location of the receiving facility or other location.



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

- (3) Safe evacuation from the ALF facility, which includes consideration of care and treatment needs of evacuees; staff responsibilities; transportation; identification of evacuation location(s); and primary and alternate means of communication with external sources of assistance.
- (4) A means to shelter in place for residents, staff, and volunteers who remain in the ALF facility.
- (5) A system of medical documentation that preserves resident information, protects confidentiality of resident information, and secures and maintains the availability of records.
- (6) The use of volunteers in an emergency or other emergency staffing strategies, including the process and role for integration of State or Federally designated health care professionals to address surge needs during an emergency.
- (7) The development of arrangements with other assisted living facilities and other providers to receive residents in the event of limitations or cessation of operations to maintain the continuity of services to residents.
- (8) The role of the assisted living facility in the provision of care and treatment at an alternative care site identified by emergency management officials.



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

C. Communication plan: The assisted living facility must develop and maintain an emergency preparedness communication plan that complies with federal, state, and local laws and must be reviewed and updated at least annually. The communication plan must include all of the following:

(1) names and contact information for the following:

- (a) staff;**
- (b) entities providing services under arrangement;**
- (c) residents' physicians;**
- (d) other assisted living facilities;**
- (e) volunteers;**

(2) Contact information for the following:

- (a) federal, state, tribal, regional, or local emergency preparedness staff;**
- (b) the state licensing and certification agency;**
- (c) the office of the state long-term care ombudsman;**
- (d) other sources of assistance;**



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

(3) Primary and alternate means for communicating with the following:

- (a) assisted living facility's staff;**
- (b) federal, state, tribal, regional, or local emergency management agencies;**

(4) A method for sharing information and medical documentation for residents under the assisted living facility's care, as necessary, with other health care providers to maintain the continuity of care.

(5) A means, in the event of an evacuation, to release resident information as permitted under 45 CFR 164.510(b)(1)(ii).

(6) A means of providing information about the general condition and location of residents under the facility's care as permitted under 45 CFR 164.510(b)(4).

(7) A means of providing information about the assisted living facility's occupancy, needs, and its ability to provide assistance, to the authority having jurisdiction or the incident command center, or designee.

(8) A method for sharing information from the emergency plan that the facility has determined is appropriate with residents and their families or representatives.



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

D. Training and testing: The assisted living facility must develop and maintain an emergency preparedness training and testing program that is based on the emergency plan set forth in paragraph (a) of this section, risk assessment at paragraph (a)(1) of this section, policies and procedures at paragraph (b) of this section, and the communication plan at paragraph (c) of this section. The training and testing program must be reviewed and updated at least annually.

(1) Training program: The assisted living facility must do all of the following:

- (a)** Initial training in emergency preparedness policies and procedures to all new and existing staff, individuals providing services under arrangement, and volunteers, consistent with their expected roles.
- (b)** Provide emergency preparedness training at least annually.
- (c)** Maintain documentation of the training.
- (d)** Demonstrate staff knowledge of emergency procedures.



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

- (2) Testing: The ALF facility must conduct exercises to test the emergency plan at least twice per year, including unannounced staff drills using the emergency procedures. The ALF facility must do the following:
- (a) participate in an annual full-scale exercise that is community-based; or
 - (i) when a community-based exercise is not accessible, conduct an annual individual, facility-based functional exercise;
 - (ii) if the ALF facility experiences an actual natural or man-made emergency that requires activation of the emergency plan, the ALF facility is exempt from engaging its next required a full-scale community-based or individual, facility-based functional exercise following the onset of the emergency event;
 - (b) conduct an additional annual exercise that may include, but is not limited to the following:
 - (i) a second full-scale exercise that is community-based or an individual, facility-based functional exercise; or
 - (ii) a mock disaster drill; or
 - (iii) a tabletop exercise or workshop that is led by a facilitator includes a group discussion, using a narrated, clinically-relevant emergency scenario, and a set of problem statements, directed messages, or prepared questions designed to challenge an emergency plan.
 - (c) analyze the assisted living facility's response to and maintain documentation of all drills, tabletop exercises, and emergency events, and revise the assisted living facility's emergency plan, as needed.

8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

E. Emergency and standby power systems: If the assisted living facility has residents that depend on medical equipment that requires electricity to function, the facility must have in their emergency plan how they will address the power outage and the needs of the resident to keep them safe.

F. Integrated healthcare systems: If an assisted living facility is part of a healthcare system consisting of multiple separately certified healthcare facilities that elects to have a unified and integrated emergency preparedness program, the assisted living facility may choose to participate in the healthcare system's coordinated emergency preparedness program. If elected, the unified and integrated emergency preparedness program must do all of the following:

- (1) Demonstrate that each separately certified facility within the system actively participated in the development of the unified and integrated emergency preparedness program.
- (2) Be developed and maintained in a manner that takes into account each separately certified facility's unique circumstances, resident populations, and services offered.
- (3) Demonstrate that each separately certified facility is capable of actively using the unified and integrated emergency preparedness program and is in compliance with the program.



8.370.14.31 EMERGENCY PREPAREDNESS REQUIREMENTS:

(4) Include a unified and integrated emergency plan that meets the requirements of Subsection A of 8.370.14.31 NMAC, and Paragraphs (2), (3), and (4) of Subsection F of 8.370.14.31 NMAC. The unified and integrated emergency plan must also be based on and include:

(a) A documented community-based risk assessment, utilizing an all-hazards approach.

(b) A documented individual facility-based risk assessment for each separately certified facility within the health system, utilizing an all-hazards approach.

(5) Include integrated policies and procedures that meet the requirements set forth in Subsection B of 8.370.14.31 NMAC, a coordinated communication plan and training and testing programs that meet the requirements of Subsection C and D of 8.370.14.31 NMAC, respectively.



8.370.14.36 MEDICATIONS:

B.

Old: Facility staff may assist a resident with the self-administration of medications if written consent by the resident is given to the administrator of the facility or the administrator's designee. If the resident is incapable of giving consent, the surrogate decision maker named in accordance with New Mexico law may give written consent for assistance with self-administration of medications. All staff that assist with self-administration of medications shall have successfully completed a state approved assistance with self-administration of medication training program or be licensed or certified by the state board of nursing.

New: Requirements for assisting with self-administration of medications.

- (1) Assistance with self-administration of medication may be rendered by a non-licensed person to assist the resident who has the capability to self-administer medications, by prompting, reminders, hand-over-hand assistance, handing the medication container to the resident, opening the medication container, or placing the medication in the resident's hand.
- (2) Written consent for assisting with medication self-administration shall be signed annually and when there is any change in either the resident's functional ability or the designation of a new surrogate decision maker.
- (3) All staff that assist with self-administration of medications shall have successfully completed an assistance with self-administration of medication training program or be licensed or certified by the state board of nursing.
- (4) The individual is unable to complete the entire process of taking medication.
- (5) The individual is unable to determine if he/she is receiving the expected response from the medication.
- (6) The individual is able to communicate to staff verbally/vocally or through gestures or other non-verbal communication he/she is experiencing a problem, pain, or discomfort.
- (7) The individual's condition is stable and unchanged and signs or symptoms are within established ranges, frequencies or patterns.
- (8) The individual's condition does not require frequent assessment or monitoring by a licensed nurse to determine or evaluate his/her health status or his/her response to medication or treatment



8.370.14.36 MEDICATIONS:

D.

Old: Only a licensed nurse (RN or LPN) shall administer any medications or conduct any invasive procedures provided by the following routes: intravenous (IV), subcutaneous (SQ), intramuscular (IM), vaginal or rectal. Only a licensed nurse shall administer non-premixed nebulizer treatments.

New: Only a licensed nurse (RN or LPN) shall administer any medications or conduct any invasive procedures provided by the following routes: intravenous (IV), subcutaneous (SQ), intramuscular (IM), vaginal or rectal. Only a licensed nurse shall administer non-premixed nebulizer treatments. Unless otherwise allowed by statute, the assisted living facility shall not permit a qualified medication administration person to perform any of the following tasks:

- (1) Intravenous, intramuscular or subcutaneous injections.
- (2) Gastrostomy or jejunostomy tube feeding.
- (3) Chemical debridement.
- (4) Administration of medication for purposes of restraint.
- (5) Titration of oxygen.
- (6) Decision making regarding PRN or “as needed” medication administration.
- (7) Assessment of residents or use of judgment including, but not limited to, medication effect.
- (8) Pre-pouring of medication.

8.370.14.36 MEDICATIONS:

E.

Old: Not Included

New: Limited administration of medication may be permitted for pouring or squirting a medication into the mouth of a resident with a syringe or for masking or deceiving administration of a medication including, but not limited to, concealing in food or liquid, when:

- (1) There is a physician or physician extender's orders directing the specific administration.**
- (2) A team is convened comprised of facility administrator, the resident or their surrogate decision maker and the hospice or home health clinician, to jointly determine the method of limited administration of medication. Team approval shall be in writing, signed and dated by all team members and the approval shall be maintained in the resident's record.**
- (3) The staff has received specific training on the limited administration of medication for that individual by the hospice provider or other licensed professional.**
- (4) A current written consent that identifies the type of medication delivery and the assistance or administration the individual requires that is signed by the individual/guardian/surrogate health decision maker.**



8.370.14.36 MEDICATIONS:

G/H – Lettering changed due to insertion above

- ❖ **Old: G. Medication assistance record (MAR)**
- ❖ **New: H. Medication administration record (MAR):**

NMHCA/NMCAL Comments

Eliminate 8.370.14.36.A, State board of nursing licensed or certified health care professionals are responsible for the administration of medications. Administration may only be performed by these individuals. The language omits provider types who administer medications, and it also inserts the board of nursing into assisted living regulatory oversight when according to Chapter 61 Article 3 NMSA 1978, or the “Nursing Practice Act”, the purpose of the Board is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, schools of nursing, hemodialysis technicians and medication aides in the state.

Most assisted living communities are not medical models and do not employ nurses. If solutions which will place many of New Mexico’s consumers at risk of not being able to find necessary care. As stated above, allowing medication delivery in the absence of nurses is not a novel concept in NM and is used in the school system and a special designation is by the NM Department of Health Developmental Disabilities Supports Division allows for medication delivery under certain criteria, <https://www.nmhealth.org/publication/view/policy/3575/>. This approach is also allowed in Nevada, a state with similar challenges as NM.

The Department of Health Developmental Disabilities Supports Division allows for assistance with medication delivery by staff for individuals who do not meet the criteria to self-administer medications independently or with physical assistance. NMHCA/NMCAL suggests adopting the same criteria for the assisted living resident with dementia and those on hospice.



NMHCA/NMCAL Comments

1. Assistance with delivery of medication is allowed for residents if
 - a. The individual is unable to complete the entire process of taking medication.
 - b. The individual is unable to determine if he/she is receiving the expected response from the medication.
 - c. The individual is able to communicate to staff verbally/vocally, through gestures or by using communication devices that he/she is experiencing a problem, pain or discomfort.
 - d. The individual's condition is stable and unchanged and signs or symptoms are within established ranges, frequencies or patterns.
 - e. The individual's condition does not require frequent assessment or monitoring by a licensed nurse to determine his/her health status or his/her response to medication or treatment.
2. Current written consent must be obtained from the individual/family/power of attorney for assistance with medication delivery by staff.
3. All individuals must have a current PCP order to receive assistance with medication delivery by staff.



8.370.14.38 LAUNDRY SERVICES – No Change NMHCA/NMCAL Comments

A.

(5) In new construction or newly licensed facilities with more than 15 residents, washers shall be in separate rooms from dryers. The rooms with washers shall have negative air pressure from the other facility rooms.

Eliminate this provision. Facilities should follow Life Safety Code and building codes. The requirement is onerous and unnecessary.

8.370.14.46 WATER

E.

- ❖ **Old:** The hot water temperature that is accessible to residents shall be maintained at a minimum of 95 degrees fahrenheit and a maximum of 110 degrees fahrenheit. Hot water in excess of 110 degrees fahrenheit is permitted in kitchen and laundry areas, provided that residents are supervised in order to prevent injury.
- ❖ **New: E:** The hot water temperature that is accessible to residents shall be maintained at a minimum of 95 degrees fahrenheit and a maximum of 120 degrees fahrenheit. Hot water in excess of 120 degrees fahrenheit is permitted in kitchen and laundry areas, provided that residents are supervised in order to prevent injury.

8.370.14.56 TOILET AND BATHING FACILITIES

A.

(1)

- ❖ **Old:** The facility shall provide at least one tub and one shower or combination unit to allow for residents bathing preference.
- ❖ **New:** The facility shall provide at least one bathing unit to allow for residents bathing preference.

8.370.14.67 STAFF AND RESIDENT FIRE AND SAFETY TRAINING – No Change NMHCA/NMCAL Comments

D.

(1)

Address the requirement for full evacuation at each fire drill as this creates a danger to residents. Allow for table top exercises or simulations by staff, especially for the night time drills and in severe weather.

8.370.14.69 HOSPICE - No Change NMHCA/NMCAL Comments

Under 8.370.14.69.C.1 and 8.370.14.69.C.2, clarify training requirements and consider changing the 1 hour per resident and 6 hours of training annually. Training should be adequate to meet the needs of the residents being served so including a set number isn't conducive to that. Also, include training in the annual training not to exceed 12 hours. Assisted Living providers with hospice and dementia residents are currently required to provide 30 hours of training annually.

Include language that emphasizes the goal of allowing residents to remain in the assisted living facility at end of life under 8.370.14.69.D.4 and 8.370.14.69.D.5



8.370.14.70 Memory Care Units - No Change NMHCA/NMCAL Comments

Under (4), Memory Care Unit, provide additional clarification.

Under (5), Secured environment, remove the word 'locked.' Also, remove the term locked from the regulatory language anywhere it appears in reference to a secure environment for the resident.

Under 8.370.14.70.C, requiring 12 hours of training on top of the 12 hours of training currently required for assisted living staff is onerous and does not serve the residents. All training should be based on the needs of the residents and the annual training should cover this.

Under 8.370.14.70.D, clarify allowing those who have completed a state approved program may provide medications and include allowing the facility staff to be included as a family designee.



Next Steps

Send your comments and/or concerns to NMHCA/NMCAL at talter@nmhca.org.

NMHCA/NMCAL will develop talking points based on recommendations compiled by the Rule Subcommittee and Assisted Living Task Force and send those to you.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, 4/16/2025. Please send comments to: Division of Health Improvement P.O. Box H Santa Fe, NM 87504, Recorded comments may be left at (505) 476-9093. You may send comments via email to: dan.lanari@hca.nm.gov . Written and recorded comments will be posted to the agency's website within 3 days of receipt. All comments will be given the same consideration as oral testimony made at the public hearing.



Next Steps

Join the public hearing:

Individuals wishing to testify may contact the Division of Health Improvement (DHI), P.O. Box H, Santa Fe, NM 87504, or by calling (505) 476-9093.

This is a repeal and replacement of the NMAC requirements for Assisted Living Facilities for Adults. A public hearing to receive testimony on this proposed rule will be held on April 16th, 2025 at 11:00 am, in the Hozho conference room #109, 5300 Homestead Rd. NE, Albuquerque NM 87110. The public hearing will be a Hybrid, via Zoom as well as in person, pursuant to Section 14-4-5.6 NMSA 1978.

Zoom Link

<https://us02web.zoom.us/j/88249258779?pwd=bllXZpnL1y6bKI9cTsaHWDLZPJkyCS.1>

Passcode:278622

