Happy 2016! The New Year always brings a sense of excitement, possibility and rejuvenation. We assess where we are and where we want to go; noting the past year’s accomplishments and the new year’s goals. All of us do this in our personal and professional lives, as individuals and as companies…or Associations. OALA has experienced a very good year with record membership, conference attendance and exhibitor participation. We want to thank all of our members for their support and promise to continue to work hard this year as The Ohio Assisted Living Specialists!

Our Fall Conference was well attended and received. Evaluations on our speakers were particularly good and trade show participation was up with a number of new vendors interacting with attendees. Our Honoring Excellence recognition program was a highlight of the meeting, with honorees receiving congratulations and a commemorative plaque as their photos were projected on the screen behind them on the stage. While this program is only a small piece of what we do, it is very important, especially in these times with all communities facing staffing challenges. Enjoy the group photo of our 2015 winners and some of the individual write-ups on them in this newsletter. The other winners will be honored in the newsletter throughout the year and they are all featured on our website.

Next on our educational agenda, we will be offering during the winter months a series of 4 webinars. The first webinar will detail the differences between RCF compliance and Assisted Living Waiver compliance whether in the traditional ALW or as a MyCare service provider. Additionally, all the necessary steps and requirements to become certified through the Department of Aging as an ALW provider will be highlighted. The following two seminars will be given by popular presenter, Dr. Verna Carson on specific areas within dementia. One will be devoted to sexuality and dementia, a very relevant topic with our member communities, especially with the opening of so many memory care units in Ohio. The last webinar this winter will be given by the Director, Jean Thompson, on the top citations during 2015 and other rule related areas of concern. That particular presentation is a member favorite.

We also will be providing our long standing ED/Administrator training this summer. We have been providing this comprehensive law, rule and survey training for the last 15 years. While no licensure or certification is required in Ohio for AL EDs or Administrators, this training provides the practical tools and information for individuals to perform outstandingly in their positions. Additionally, our national
From the Chairperson .....continued

Association will be offering this year in the Fall, a high level national certification for AL EDs and Administrators. It will offer a certification by a third party accrediting institution, the Senior Living Certification Commission, with no nursing home ties will be a first. This program will be affordably priced and will be a great add-on to the OALA Ed/Administrator training.

Additionally, as some of you may know, our national association has changed its name from ALFA to Argentum. This name change encompasses the population we serve and allows for advancements and improvements in senior care. Additionally, they are establishing basic standards for Assisted Living nationally.

From a regulatory and legislative perspective we will continue to work for greater ALW reimbursement, to solve issues and problems for members with the Managed Care Organizations and to understand and inform members of rule changes likely to take effect during the summer of 2016. See Director’s article. Additionally, we will begin to overview the RCF rules in anticipation of the regular 5 year rule review in 2017. We are also putting together materials to dispute any “perception” either in Ohio or nationally promoted that residents are staying too long in Assisted Living. The recent survey sent to members regarding nurse staffing is a piece of that response.

Assisted Living is growing significantly and our Association is proud to represent it. As we continue to grow we want to maintain the qualities that have propelled Assisted Living with the public – a commitment to quality care in a home-like environment with demonstrated concern for residents, family and staff. Happy New Year to you All!

Legislative & Regulatory Update Jean Thompson, OALA Director

ALW Advocacy Efforts
We are continuing our efforts in concert with LeadingAge Ohio to increase in some way provider reimbursement for the ALW. At this point in time, we think the best approach may be working through the Managed Care Organizations who are free to implement “pilot programs” where reimbursement could be increased to providers. It is in the best business and financial interests of the MCOs to place and keep as many nursing home qualified individuals in the assisted living setting rather than in nursing homes, given the dramatic cost difference between assisted living and nursing home care. We are talking to the MCOs as a group through their Association. Additionally, we will continue to pursue a real legislative “champion” for assisted living and plan to talk more with Ohio’s Medicaid Director.

Unfortunately, as members know, the Ohio Department of Aging has taken the position that their current rule on double occupancy in the ALW (previous relationship), meets the requirements of language in the budget permitting it, since ODA was given the power to create rules on it. Realistically, until we successfully come through all the newly mandated requirements from CMS on HCBS, although single occupancy is not one of them, we will likely not be able to move forward on this front.

OALA Advocating for written process when ALW provider changes ownership
We have met with ODA asking them to outline the steps needed to streamline the certification process when an AL property offering the ALW is purchased by another entity, either a company that offers the ALW in other locations or one that does not. Currently, there are no written guidelines or directions from ODA. It’s critical that this process runs smoothly so that the new provider receives payment and there is no disruption in service to residents.

ODA Looking for Ways to Permit Their Designees to View RCF criminal Record Checks
ODA discussed with us the need to formalize a process for their representatives (AAA) to review the RCF employee criminal record background check log and individual reports. Previously ODA had for a brief time, new requirements for ALW providers in relation to criminal record checks. OALA was successful in having those duplicative, conflicting, requirements removed for ALW providers in 2013.
Now, however, ODA is attempting to work with Health so that their representatives can review as required by their rules (ODA’s) the criminal record check log and individual records. Currently, the RCF rules only allow the ODH Director or his designees (surveyors) to.

**ODH Acting Chief, Office of Health Assurance and Licensing, AL Comment**
At an ODH provider meeting (11/12/2015), David Holston, Acting Chief of Health Assurance and Licensing, commented that based on conversations he has had with other states, individuals may be staying too long in assisted living when their needs demand a higher level of care. While we do not agree with this perspective and believe that whether a resident should remain in AL needs to be individually determined based on their specific needs and the specific Assisted Living communities capabilities and staffing within regulatory compliance, it is important for members to be aware of this comment as it could become a focus at some point in the future.

We are preparing a response, if this issue should come to the forefront, reviewing nursing home staffing regulations and soliciting information on RCF staffing. The nursing home staffing regulations changed in 2013, requiring less nurse staffing and removing set patient to resident staffing ratios. Interestingly, the current nursing home regulations in terms of aide staffing are not as dissimilar as one might think from the requirements in Assisted Living communities.

We are still compiling the results of our recent member survey regarding their nurse staffing in an effort to bolster the position that residents with increasing higher acuities can be cared for in Assisted Living and that communities where that is happening have increased their skilled staffing. If you did not respond to the survey and would still like to please contact our office.

**RCF Resident Satisfaction Survey…Access your “raw scores”**
The Ohio Department of Aging informed us that Vital Research has been sending out information on how communities can access their individual scores on the RCF Resident Satisfaction survey. These instructions will be going out to communities, in the order that the interviews were completed. They have assured us that these notifications will go out over time to all providers. They also have indicated that statewide results will be available and published on the Long Term Care Consumer Guide in late January or early February. For questions, call Erin Pettegrew: 614.995.0882

**Food Code Changes Coming**
The Ohio Uniform Food Code underwent its mandated 5 year rule review in 2015. The rules are being updated to reflect changes in the Food and Drug Administration’s Model Food Code. The most significant proposed change is in OAC 3717-1-02.4. It would require one individual for each Risk Level III and IV food service operation, which includes RCFs, to obtain level two certification in food protection.

Previously, this requirement did not exist for RCF food service providers. In fact, in 2010, Ohio began requiring Level I training or certification for the person in charge (PIC), but “grandfathered” all existing food service licensees, excluding them from the training requirement, unless they had a history of compliance problems or there had been a foodborne illness outbreak, OAC 3701-21-25 (I)(1-5).

**This new requirement will mean that each RCF food licensee will need to have a person with Level II certification by March 1, 2017.** The rules are effective March 17, 2016 but provide a year’s grace period for licensees to receive and complete their training. While only one individual at each food licensee location will be required to have the Level II certification, local food inspectors will expect whoever is there when they come to be aware of basic food safety, whether they are the individual with the Level II certification or not. Food service staff need to be able to answer inspector questions related to food safety (sanitation, food temperatures, etc.). For a listing of possible questions see: OAC 3717-1-02.4
Certification programs are approved by ODH. Level II training is more expensive than the lower level training, with courses starting at $125. ServSafe is one provider, or you can find other level two providers in your county at: http://www.healthspace.com/Clients/Ohio/Ohio_Website_Live.nsf/FoodCertifications.xsp

Other duties being added for the person in charge include: to verify delivery of food items during non-operating hours, to maintain and implement the required written procedures and plans specified in the rules, and to have a written procedure for responding to vomiting or diarrheal events.

**ALW Rule Changes Coming/Effective Summer of 2016**

A number of rules impacting ALW providers will become effective this coming summer. Below we have provided a brief overview of them. As soon as final rules are available, we will post them to our website and provide more detail. The first two rules deal with the implementation of the new definitions of Home and Community Based Services, and the last, will address a change in the state’s Medicaid eligibility system format.

**HCBS Setting Rule**

Rule OAC 5160-45-00 ODM-administered waiver program: home and community-based settings, defines settings that are definitely included (private residences) and settings that are definitely not included (nursing homes) as home and community based settings. Additionally it outlines the “characteristics” that must be present in provider owned or controlled settings, such as Assisted Living, in order for them to be considered Home and Community Based settings for the waiver. Below are the “additional” requirements.

- Specific physical space that is rented or occupied under a “legally enforceable agreement”, if not covered under landlord tenant – must offer similar protections. The “agreement” must address comparable eviction processes & appeals. (We have suggested that ORC residents’ rights language on transfer and discharge meet these requirements.) The residency agreement must specify the responsibilities of the individual and the HCBS setting; the circumstances under which the individual would have to relocate, terminating the agreement; steps for review and appeal. This may mean that the residency agreement for ALW clients would need to include some of the other information provided to residents and sponsors on admission.
- Privacy in sleeping or living unit; does not preclude double occupancy for HCBS but individual must have “choice” of roommates
- Setting and unit have entrance doors lockable by individual; with only appropriate staff having keys
- Freedom to furnish, and decorate unit, within bounds of agreement
- Freedom and support to control their own schedule and activities; access to food at any time
- Visitors of their choosing at any time

In discussion with the State, OALA asked if the “responsibilities of the individual and the HCBS setting” might stipulate, for example, while not restricting visitors requiring that they not disrupt other tenants. While they have not officially responded to that suggestion, they did say as with an apartment setting, etc. the police could be called due to noise, etc. Safety is another issue and we plan to talk further with ODM and ODA about this, but assume similarly, the police could be called for example, if other residents express concerns.

- Setting is physically accessible

This rule only permits modifications to these requirements by specific assessed need, justified in the individual’s person-centered service plan. This is the only avenue for adjustment of the above requirements.

**HCBS Person-Centered Care Planning Rule**

Rule OAC 5160-45-99, ODM-administered waiver program: person-centered care planning, while impacting ALW providers at some level, states that the care plan cannot be done by the provider. It is a new rule on how the person-centered care/service plan will be developed. The rule calls for the plan development to be led by the individual when possible and include a team chosen by them; however, the HCBS service providers, in our case the ALW provider, can not provide case management, provider oversight or develop the person-centered service plan. Service plan development will continue to be the responsibility of the AAA case manager. This service plan must be reviewed and revised at least every 12 months, on a significant change, or at the request of the individual.
Medicaid Eligibility Determination Change

The State of Ohio plans to switch its Medicaid eligibility system from a 209(b) to a 1634 format this coming July. This change means that individuals who qualify for SSI, will automatically qualify for Medicaid. It will not affect payment to providers in any way, nor will it impact a large group of Assisted Living Waiver residents or potential residents. Individuals can still apply for Medicaid through their County Department of Jobs and Family Services, however, as part of this change, the asset limit will be increased from $1500 to $2000 to match the SSI eligibility criteria.

Individuals with a monthly income higher than 300% of SSI, or more than $2199 in 2016, will need to put any income over that into a Qualifying Income Trust (QIT), also known as a Miller Trust. The QIT must:

- Only contain income of the individual seeking Medicaid eligibility
- Must be irrevocable (can not be amended or revoked)
- Must state upon death that Ohio receives all amounts remaining in the trust up to an amount equal to the total Medicaid benefits paid for the individual.

It’s possible that this new eligibility determination method may help some individuals who do not have enough funds to privately pay for Assisted Living, but who previously were not eligible for Medicaid because they had more income than $2199, the allowable Community Income Standard. *QIT or Miller Trusts will be discussed in a session at our Spring Conference.*

Questions & Answers

The following questions were researched with the Ohio Department of Health or other appropriate state agencies or other organizations.

Do all employees of a licensed Residential Care Facility need to have a criminal record background check, including fingerprinting?

In general yes, although it might be possible, to “carve out” a very small number of staff that do not meet the regulatory requirement below. However, given the potential liability, and the need at many times in AL for everyone to pitch in wherever needed, it is a general practice to check all staff.

**OAC 3701-13-01 Definitions (F) “Direct care” means the provision of a service to an older adult or group of older adults that involves one or more of the following:**

1. Coordination of, direct supervision of, or provision of personal care, nursing, or health related services;
2. Routine contact, such as face-to-face, hands-on assistance, verbal cuing, reminding, standing by or monitoring of activities;
3. Activity that requires the person to be routinely alone with older adults or to routinely have access to older adults’ personal property or financial documents;
4. Any routine service or activity designated as direct care by the chief administrator;
5. In the case of a hospice care program, any service provided in an older adult's place of residence.

ALW Background Check Confusion

Some members continue to think that they must comply with the previously required duplicate criminal record background checks for Assisted Living Waiver providers, which were different than the checks required for all RCF providers. Per the Ohio Department of Aging’s Policy Manager and Regulatory Ombudsman, Tom Simmons, Assisted Living Waiver providers were no longer subject to those separate requirements as of September 29, 2013. All RCFs, whether ALW providers or not, are only subject to the criminal record check rules for licensed “homes” in Ohio, found in OAC 3701-13-01 thru -09.
Do rules state a time limit for the receipt of a required FBI check when the applicant has not lived in Ohio the previous 5 years? What if the BCII check comes back without any disqualifying offense, but we have not yet received the FBI check? Can we continue conditional employment?

We checked with ODH and they stated that there is not a return time requirement for the FBI checks in the rules that govern criminal record background checks in RCFs (OAC 3701-13-01 thru-09), as there is for the BCII check (30 days). This could present an issue for providers in terms of making a decision to continue conditional employment and concern for their own possible liability. Therefore, many, if not most, employers establish a policy on timeframe related to the return of the FBI check and conditional employment, often mirroring the BCII timeframe of 30 days.

If a cognitively well resident asks us not to call their family after they’ve fallen, are we still required to notify their family by regulations?

You would not be required to notify the family, based on OAC 3701-17-62 (A)(4); although you would want to document the resident’s wishes/request.

(A) In the event of a significant adverse change in residents’ health status, the RCF shall do all of the following:
(1) Take immediate and proper steps to see that the resident receives necessary intervention including, if needed, medical attention or transfer to an appropriate medical facility; (2) Make a notation of the change in health status and any intervention taken in the resident’s record; (3) Provide pertinent resident information to the person providing the intervention as soon as possible; and (4) Notify the sponsor unless the resident refuses or requests otherwise.

Space Heaters in RCFs Update

Space heaters per the Ohio Fire Code are prohibited in all I-2 buildings; whether the building functions as a skilled care facility or not. Your building use group classification is found on your certificate of occupancy. Your certificate of occupancy, per regulations, needs to be available onsite, and all management staff should know its location.

Space heaters are permitted in I-1 buildings with certain stipulations, although an RCF is free to establish its own policy on them, either prohibiting them completely or allowing them in certain circumstances. The concern, of course, with the use of any space heater in an RCF is safety. If facility policy permits them in an I-1 building, assessments and use safeguards should be put in place and the heater should have “tip-over/shut off” protection. Any space heater permitted, by regulation and facility policy must comply with the 2011 Ohio Fire Code, 605.10, OAC 1301:7-7-06

(10) 605.10 Portable, electric space heaters. Where not prohibited by other paragraphs of this code, portable, electric space heaters shall be permitted to be used in all occupancies other than Group I-2 and in accordance with paragraph E)(10)(a)605.10.1 to (E)(10)(d)605.10.4 of this rule. Exception: The use of portable, electric space heaters in which the heating element cannot exceed a temperature of 212°F (100°C) shall be permitted in nonsleeping staff and employee areas in Group I-2 occupancies.

(a) 605.10.1 Listed and labeled. Only listed and labeled portable, electric space heaters shall be used.
(b) 605.10.2 Power supply. Portable, electric space heater shall be plugged directly into an approved receptacle.
(c) 605.10.3 Extension cords. Portable, electric space heaters shall not be plugged into extension cords.
(d) 605.10.4 Prohibited areas. Portable, electric space heaters shall not be operated within 3 feet (914mm) of any combustible materials. Portable, electric space heaters shall be operated only in locations for which they are listed.

Are heating pads addressed in the RCF rules? What about electric blankets?
The Ohio Department of Health stated a community should have a policy or guidelines - on these items and their use. Although they are not prohibited by RCF regulations or the Ohio Fire Code, a facility policy could prohibit or restrict them. If they are permitted by facility policy, the policy should call for an assessment of the individual for any health related contraindications and the individual’s ability to use the items safely, along with a process for appropriate monitoring of
the item’s use. Additionally, you need to address their accessibility to other residents who could potentially be harmed by them. Perhaps, heating pads, for example, could be kept at the wellness center, so that someone is aware when they are being used. Essentially, ODH said it wouldn’t get involved in the use of these items, unless there was harm to a resident, and then they would expect to see that appropriate policies and procedures had been followed. The State Fire Marshal’s Code Enforcement office stated their use would be covered as a portable electric appliance (no frayed wires, etc.) and any manufacturer’s instructions would need to be followed; such as a requirement to be plugged directly into an outlet.

**Non-Heat Producing Electric Fireplaces**

Additionally, the State fire marshal’s office stated that an electric “fireplace” without a heating element would function in terms of fire regulations as any electrical appliance. So, therefore, all regulations for electrical appliances would need to be followed (in good repair, UL rated, no frayed wires and plugged directly into an outlet). Such non-heat producing “fireplaces” are used to create “atmosphere”. *Our thanks to NW Ohio District Fire Chief, Tom Miller.*

**Do resident DNR orders need to be signed annually?**

No. DNR orders or other advance directives do not have an expiration date unless the physician’s order itself has an expiration date. An example of an order with an expiration date is an antibiotic order with a 10 day course of treatment. The antibiotic order expires based upon the time set in the order. Facility’s policies and procedures on advanced directives should not include an expiration date to assure that there is a continuous order for implementing the advance directive or performing a full code. However, it is good practice to periodically revisit the resident’s choices about advance directives. Some facilities incorporate a discussion of advance directives on an annual basis with an update of their care plan/service plan. If there are changes in the resident’s desires as they decline and/or improve, then the facility staff can contact the physician that the resident is requesting changes to the order. *Thanks to Janet Feldkamp, OALA Trustee & Partner at Benesch, Friedlander, Coplan and Aronoff, for this answer.*

**Can a resident have a rug in their apartment in a RCF? …How about rugs in common areas of the community?**

Yes; although the rugs must be in good repair, secured, and not create a safety hazard. The answer is found in the building maintenance section of the RCF rules - OAC 3701-17-65 (l) *The residential care facility shall keep floors in good repair.* Any rugs used in the facility shall be secured in a manner that does not create a safety hazard; With our high fall risk residents, the presence of rugs should be considered in the environmental risk factors. Rugs should lie flat, on even floor surfaces and not present a tripping hazard. Slip resistant backing and double-faced carpet tape under the rug can help to secure it. Changes in floor surfaces can cause a loss of balance. Contrasting colors may help cue the older adult, helping them to visually distinguish these floor surface changes.

**Do we need to issue a 30 day discharge notice to every resident that moves out of (is discharged from) our community?**

No. The 30 day discharge notice required in Ohio law, ORC 3721.16 is for an *involuntary* discharge; when the resident, or their family, does not agree that they need to move. The letter is notifying them of your decision to discharge them, why you are making this decision (no longer can meet their needs, non-payment, etc...), the date of the discharge, the proposed safe location where they will be discharged to, and their rights to request a hearing. If a resident is moving *voluntarily*, no notice is required. All discharges must be discussed with a resident and their family or responsible party. If they agree to the move, the discussion and outcome should be documented. Good communication with the resident and family concerning the issue or change in needs is always preferable to the last resort *involuntary* process. If an emergency situation exists, the discharge notice can be given, effective immediately.

**If we are discharging a resident with significant cognitive impairment, do we still need to provide the resident with a copy of the 30 day discharge notice or do we only need to give it to their sponsor?**

Even though the resident will likely not understand the discharge notice, you are still required by rules to provide it to
them. The law requires that a copy of a discharge notice be provided to the resident, the resident’s sponsor, and the Ohio Department of Health (Legal Office).

**OAC 3701-61-03 (A)** The administrator of the home shall notify a resident in writing, and the resident’s sponsor or legal representative in writing by certified mail, return receipt requested, in advance of any proposed transfer or discharge from the home. The administrator shall send a copy of the notice to the department. ...

Delivery is specified for the resident’s sponsor (or responsible party), and requires it to be delivered via certified mail. The delivery method is not specified for the resident, and ALFs may use their judgment regarding how to document delivery. Most ALFs will choose to hand deliver the notice. Rules do not require a copy to be sent to the Ombudsman.

**Can we admit or keep a resident with a venous “stasis” ulcer, or is that prohibited in RCFs?**
Yes. The prohibition is against a Stage III or IV pressure ulcer, **OAC 3701-17-57 B (5)**; so residents with other “nonpressure” related types of ulcers can live in a RCF, as long as the appropriate care for their wound can be provided by staff nurses or home health. These other types of ulcers would include arterial, neuropathic (diabetic), or venous “stasis” ulcers.

**What is the National Provider Identifier (NPI)? It was requested when we applied to become certified by ODA as an Assisted Living Waiver provider.**
All **Assisted Living Waiver Providers** are required to obtain an NPI. The Administrative Simplification provisions of HIPAA required the NPI as a standard unique identifier for each health care provider for insurance billing, etc. So, if you do electronic health transactions, you will need an NPI too, whether you are an ALW provider or not.

**Is there a requirement to have an AED (Automated External Defibrillator) available in our Assisted Living community?**
No, we checked with the Ohio Department of Health and they confirmed that there is no requirement to have an AED on site at a licensed residential care facility.

**Do we need to have a crash cart, or extra oxygen tanks on site in the event of an emergency in an assisted living community?**
No, there is no requirement in an RCF to have a crash cart on-site or to store or have available “extra”, non-resident specific oxygen.

**Per regulations in an RCF, does the clean linen cart/cabinet need to be covered or enclosed?**
For this response, we checked with the ODH and a textile expert. They both responded that the clean linen did not need to be covered or enclosed, per regulations in an RCF, but that appropriate infection control procedures need to be followed whenever working with clean laundry, protecting it from any contaminants. Rules do require clean and dirty laundry to be kept separate at all times. **OAC 3701-17-62(C)(2)**

**Do requirements differ for PRN medications in RCF rules, from medications with standard orders?**
PRN (Latin “pro re nata”), or those medications ordered “as needed” can be challenging in the Assisted Living environment for communities without a nurse in the building all of the time. Often PRN pain medications and others are requested, and needed, in the middle of the night. The issue is further complicated as some RCF residents may be on medication self-administration, while others are having their medication administered by the facility, requiring a licensed nurse.

**Residents on self-administration.** Residents capable of taking their own medication, as determined by their physician on the required resident health assessment, can decide on their own whether or not to take their PRN medications. This would include those residents on self-administration that are getting some level of assistance from an aide, as permitted in **OAC 3701-17-59 F.** (Note: A resident can be on self-administration for some medications and administration by the facility for others.)
Residents on medication administration. For those residents whose medications are being administered by the facility, a nurse would need to “administer” the PRN medication. We have heard from members that ODH surveyors have been looking at the procedure for PRN medications when a nurse is not in the building. Some communities have the practice of asking the resident if they need their PRN medication before the nurse leaves the building for the evening. The prescriber could also be asked if the PRN order could be changed to a standard order.

If we purchase a property that is already licensed as an RCF, do we need to get a new license, or will the license transfer? Will a survey be needed because there is new ownership? And if so, can we request an expedited initial license inspection?

A Change of Operator Licensure application must be submitted at least 30 days in advance of the proposed change in ownership. This form includes the RCF facility licensure application (noting new name, the individuals with ownership interest, etc). The RCF license fee and the following documents are required:

- Floor plan of the facility
- Certificate of Occupancy
- Current central heating inspection report
- Current State Fire Marshal Report showing compliance
- A copy of the bill of sale.

An ODH inspection may be required if the facility has not been inspected within the past 15 months or the facility was cited for serious health or safety deficiencies on the most recent survey. If there is a survey, since the residents would have been living there with the previous operator, the Department told us they would focus primarily on the new owner’s policies and procedures moving forward. The actual license number of the building itself will not change, as that number is for the facility, not the owners. As to an expedited initial inspection, it is not necessary as a new survey is not mandated, although as stated above can happen. Forms available at: https://www.odh.ohio.gov/odhprograms/ltc/Residential%20Care%20Facilities/Applications%20and%20Forms.aspx

Are the required square footage requirements in an RCF the same for memory care as for traditional AL? Are there separate staffing requirements?

The square footage requirements are the same, 80 square feet of habitable space per resident (excludes closets and bathrooms) for multi-occupancy, 100 square feet of habitable space for single occupancy. OAC 3701-17-64 (B)

In both cases, the aide staffing level is based on the requirement to have “sufficient staff to meet the needs of residents” OAC 3701-17-54 (C)(2)(a). Generally, to meet the needs for memory care in Assisted Living, more staffing will be required. There are some differences in terms of required training in rules; however, they are not triggered by the presence of a memory impairment unit, but by serving any resident with special needs as identified in the RCF rules OAC 3701-17-55 (G)(H)(I).

TB Control Plan Annual Review

The new TB regulation requiring each RCF to perform a risk assessment based on CDC guidelines and establish their own TB Control Plan became effective effective one year ago, December 8, 2014. The CDC guidelines call for an annual review, to include at a minimum the reevaluation of the community’s risk level, and your Control Plan and its implementation.

If you established your risk last year utilizing ODH’s county TB statistics available at the time (2013), your review would encompass reassessment of your risk level with the ODH updated county statistics (2014). Normally ODH updates these statistics every March. ODH’s county statistics: https://www.odh.ohio.gov/en/healthstats/disease/tb/tb1.aspx
Some other items to consider:

- Have there been any suspected cases of TB among your staff or residents in the last year? If so, were they promptly detected and evaluated?
- Is your TB Control Plan being implemented as written? Have changes been made? Do changes need to be made?
- Is the ongoing monitoring and education of staff being done?
- Are residents being monitored through documented assessment?

You should document the annual review of your Plan and keep the updated risk assessment worksheet with the Plan. There is additional information on creating your TB Control Plan and complying with the new TB rules on our Member website.

**Do we need to check and document that the licenses of staff are current and valid?**

Yes. OAC 3701-17-55(O) All individuals used by the residential care facility who function in a professional capacity shall meet the standards applicable to that profession, including but not limited to, possessing a current Ohio license, registration, or certification, if required by law.

There is an Ohio License Verification registry at: [https://license.ohio.gov/lookup/default.asp](https://license.ohio.gov/lookup/default.asp) that allows you to look up individuals through various boards. Some examples of staff with licenses that would need to be verified would be your nurses (LPNs & RNs), medical director if you have one, or if you employ a dietitian.

**What about staffing agency licensed professionals?**

ODH stated that a copy of their license verification should either come with them or your agreement/contract with the staffing agency should indicate that the individuals they send will be currently licensed with that documentation promptly available on request.

**What about checking the STNA registry?**

We talked with ODH regarding this issue and they responded that if a provider knows an applicant is or was an STNA that they should check the Nurse Aide Registry as a matter of good practice. It is possible that there would be items on the Registry that would not be reported as part of a criminal record check, but that a provider would want to be aware of in terms of their potential liability and compliance. Additionally, ODH shared that the nurse aide registry contains information on individuals beyond STNAs, for example, dietary workers, office staff and even nurses. While not required in RCFs a check of the nurse aide registry for all job applicants might be a best practice. The registry, [https://www.odh.ohio.gov/en/odhprograms/io/nurseaide/nurseaide1.aspx](https://www.odh.ohio.gov/en/odhprograms/io/nurseaide/nurseaide1.aspx), may have information that would not be captured on a license or a criminal record background check that an RCF provider might want to be aware of.

**Can RCF staff in a memory care unit assist a resident to lock their apartment door when they are not in it?** The family is requesting for the door to be locked to prevent other residents from wandering in.

Yes, provided a staff member is accessible to open the door whenever the resident wants to re-enter their room. ODH also stated that to prevent it from being a resident’s rights issue, the community should ensure the resident in question is in accord, at least to the ability they are able to do so, and that it is not just the wishes of the family.

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**Sign-Up for OALA’s Winter Webinars!**

See page 14
Keeping An Eye On Likely Changes In Overtime Rules  Samuel Lillard, JD

As you have likely heard, the Obama Administration and the U.S. Department of Labor (DOL) have teamed up to propose changes to the regulations governing which executive, administrative, and professional employees (i.e., white collar workers) are entitled to the Fair Labor Standards Act’s minimum wage and overtime pay protections. These changes, which could become effective as early as August of 2016, target raising the minimum salary threshold for white collar workers to be considered exempt under the FLSA.

Currently, for a white collar worker to satisfy the exemption’s salary threshold, that worker must receive a salary of at least $455 per week (or $23,660 per year). The proposed change would increase this minimum salary to $970 per week (or $50,440 per year). It would also raise the salary threshold for “highly compensated employees” from $100,000 per year to $122,148 per year. Assuming this change goes into effect as expected, many of your currently-exempt white collar workers who make less than $50,440 per year will all of the sudden become non-exempt and eligible for overtime pay.

Which employees are NOT affected?
Remember, the salary-basis test is irrelevant to some segments of the nation’s workforce. One such group is non-exempt employees who are paid on a salary-plus-overtime basis. In other words, the salary threshold change would not amount to some generalized requirement that employers pay salaried, non-exempt employees at the proposed exemption’s minimum salary rate. Additionally, the change would not impact employees who meet the tests for any of the other exemptions to which the proposed salary threshold does not apply.

These employees include:
• Salespeople falling within the “outside salesman” exemption;
• For the “teaching professional” exemption;
• Authorized to practice law who are actually practicing law;
• Authorized to practice medicine or any of its branches who are actually engaged in the relevant practice;
• Holding the degree required to practice medicine who are working in a medical internship or residency; and
• Whose work meets the computer-employee exemption requirements who are paid on an hourly basis at a rate of at least $27.63.

The increased salary threshold also would not affect the status of employees who are exempt from the FLSA’s minimum-wage or overtime requirements on some basis other than one of the other exemptions. There are too many of those to list here, but an example is the overtime exemption for retail employees who are paid under a commission-based pay plan.

What should you do?
For your currently-exempt white collar workers who are paid less than $50,440 per year, you may want to analyze your pay scales and consider taking these steps for each of these employees:

1. Increase their salary to $50,440 per year to maintain the white collar exemption;
2. Leave their salary as is, lose the exemption, and delegate some responsibility to keep work hours at or below 40 hours a week
3. Leave the duties as is, but reduce the overall salary in order to compensate for the overtime payments that will likely result;
4. Do nothing, lose the exemption, and be prepared to pay the additional overtime incurred.

What should be the analytical “benchmark”?
Some employers are conducting their evaluations of the application of the white collar exemptions to their workers on the assumption that $921 per week (or $47,892 per year) is the proper comparator. It is true that, strictly speaking, this is USDOL’s current first-step proposal. However, indications are that, due to USDOL’s proposed automatic-”update”
approach, $970 per week (or $50,440 per year) – or maybe even more – would soon come to be the minimum. In fact, it is entirely possible (if not probable) that, by the time the proposal actually takes effect, this figure or a higher one will control. Employers who are reviewing this from the standpoint of longer-range planning and budgeting would be wise to project for now that the minimum salary will move up steadily and will head toward an annualized level in the mid-$50,000s in the not-too-distant future.

In a related vein, the DOL has asked for comments on whether “nondiscretionary bonuses and incentive payments” should be credited, at least some extent, in meeting the exemptions’ salary-basis test. The DOL says that it is inclined to limit any credit to no more than 10% of the salary threshold and to require settlement no-less-frequently than monthly. At present, the DOL does not include commissions in this approach, but it has also invited comments on this point. Whether, and in what form and to what extent, any credit mechanism might be included in final regulations is probably too speculative at this point to warrant including this in any forecasting.

**When will this exemption change occur?**
The DOL has not been clear on when this will occur in 2016. The DOL’s semi-annual regulatory agenda showed a July 2016 “Final Rule” timeframe for the revised regulations involving the exemptions. If the “Final Rule” is published on July 1, 2016, and if its effective date is set for 60 days later, then employers would have until August 30, 2016, to take whatever steps are necessary to maintain compliance with the FLSA. According to a report by Bloomberg BNA, Secretary of Labor Perez has said that the U.S. Labor Department is looking to a Spring 2016 date for publishing the “Final Rule” revising the regulations defining the federal Fair Labor Standards Act’s Section 13(a)(1) exemptions. It thus appears that USDOL may be revising its targeted timeframe in a way that is more in line with what was previously anticipated. Some speculate that an earlier date could help to ensure that any Congressional Review Act challenge to the changes is resolved under President Obama. If the “Final Rule” were to be published on April 1, 2016, and if its effective date was set for 60 days later, then employers would have until May 31, 2016 to comply with the new regulations. Of course, USDOL could finalize the revisions even sooner than this. We continue to recommend that management move forward with its analysis and planning so as to be prepared well in advance of whatever is the eventual effective date.

**The Bottom Line.**
If the proposed salary threshold results in some white collar employees becoming non-exempt, then there are alternative ways to pay in compliance with the FLSA’s minimum-wage and overtime requirements at levels that are financially palatable. In addition to the ones mentioned above, other methods can be built around other pay plans like commission-based, day-rate, job-rate, or shift-rate payments, and a variety of other ones.

Lastly, don’t forget that the salary level and the “salary basis” are only one part of the requirement to qualify for the white collar exemptions. The other part is the requirement that employees perform the duties required for the executive, administrative, and professional exemption. Although the duties tests are not changing, management should also reconsider whether their currently-exempt employees meet these duties requirements today. That is, whether an employee’s status is questionable regardless of his or her current or future salary amount.

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Check out the OALA Member Website for valuable resources and information on assisted living topics!
Angie Brockett, Outstanding Receptionist, from Canton Regency was nominated by Sharon Casteel, Special Care Director. Sharon stated, Angie is an organized, pleasant and detailed oriented person. She has worked at the community for 8 years and greets everyone with a smile. Angie does a host of things outside her job description to ensure the happiness of the residents...and to keep staff organized. She always follows up as needed. Sharon said “helping others seems to be “something that comes second nature to Angie.”

Kris Christian, Outstanding Marketing Coordinator, from Wiggins Place was nominated by Nancy Sutula, Administrator. Kris has been with the organization for 27 years. Not only is she an excellent Marketing Coordinator, but also goes out of her way to keep in contact with Residents and family members throughout the move-in process. Kris regularly can be seen chatting or having coffee or lunch with Residents from past years. Kris truly sees her work as more than admissions…but a process of continuing care and interest.

Susie Fleak, Outstanding Administrator Nurse Manager, from Willow Brook Christian Village was nominated by Mary Jordan, a Nurse at the community. Susie has provided 33 years of dedicated service to Willow Brook Christian Communities. Mary stated Susie is an incredible leader who manages by example, encourages staff and frequently gives words of praise. She is willing to do “whatever it takes” to ensure the community is running smoothly and that residents and staff are supported and happy. Susie is known for rolling up her sleeves and working side by side with direct caregivers.

Margaret Gwangwava, Outstanding Caregiver, from Hyde Park Health Center was nominated by Sarah Ostrow, Director of Assisted Living. Sarah said, “Margaret brings light to the faces of our residents each day.” Her 16 years of service has been an integral part of our growth and positive reputation in the broader community. In addition to her outstanding service at Hyde Park, she is also dedicated to the outside community and brought together hundreds of Zimbabwean women in Cincinnati for the annual Women of Dominion conference.

Holly Jones, Outstanding Activities Director, from Victoria House Assisted Living was nominated by Danielle Russo, Executive Director, as well as several staff members. Holly brings enthusiasm and incredible creativity to the activity program at Victoria House. Danielle said, “Holly conveys a sense of humor, honesty and warmth to all those she serves.” Even during her free time, outside of work, Holly can be found working on special projects to involve residents and their families and make the community feel like home.

Donald Lewis, Outstanding Maintenance Director, from Brookdale Troy was nominated by Jeanne Fritts, Executive Director. After 28 years of service in the Navy, Donald came to work at Brookdale Troy. In her nomination, Jeanne said, “There are associates that are good at their job, then there are those that excel such as Donald.” He has become a person the residents depend on for their overall safety. The residents often refer to him as their “first responder.” He is also very appreciated for his “fix-it” ability and residents and staff call on him often.
OALA Winter Webinar Series

Being an ALW Provider...the Basics & Beyond
January 26, 2016; 1:30-3:30 p.m.
Presenters: Linda Gillespie; Jean Thompson
Considering becoming an Assisted Living Waiver Provider...or are you a current provider and still have questions? See what’s different between the RCF and ALW rules and if you are a MyCare ALW service provider. Hear how the program works from initial application through structural compliance reviews.
Cost: $60 OALA Member Community Rate; $120 Non-Member Individual Rate

The 3 D’s...Diabetes, Depression and Dementia
February 9, 2016; 1:30-3:30 p.m.
Presenters: Dr. Verna Carson; Katherine Vanderhorst
Explore the connections and overlap between diabetes, dementia and depression. While older adults with depression are more likely to develop dementia; those with dementia are also more likely to develop clinical depression which can negatively affect diabetes. Discuss interventions and coping mechanisms specific to the needs of these residents.
Cost: $60 OALA Member Community Rate; $120 Non-Member Individual Rate

Sexuality and Dementia
February 23, 2016; 1:30-3:30 p.m.
Presenters: Dr. Verna Carson; Katherine Vanderhorst
Discuss interventions for common sexual behaviors that present over the course of Alzheimer’s disease. Explore possible explanations for these behaviors, helping to provide understanding and solutions. What are the legal implications? …and what should be included in your facility policy?
Don’t miss these important insights and approaches shared by experts in the field.
Cost: $60 OALA Member Community Rate; $120 Non-Member Individual Rate

RCF Regulations...& Top 10 Citations 2015
March 15, 2016; 1:30-3:30 p.m.
Presenter: Jean Thompson
Don’t miss this yearly favorite...What you really need to know about the RCF rules!
Start with RCF rule updates, then hear the Top Ten Citations of 2015. Discuss common problem areas, and what you need to do to comply.
Cost: $60 OALA Individual Rate; $120 Non-Member Individual Rate

All webinars provide CEU’s for AL Administrators and Staff, LNHAs, Nurses and LSW
Senior Lifestyle is Proud to Call Ohio Home

As a family-owned company, Senior Lifestyle has been helping seniors live their best lives since 1985. With 15 senior living communities in Ohio to choose from, there’s an ideal community for families from Cincinnati to Columbus to Fremont – and everywhere in between.

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Senior Lifestyle offers a level of attention, care and compassion that is unmatched. We love building relationships with our residents, and we communicate with families to ensure that they are always in the know. Most of all, our senior living communities are collaborative. Everyone from care professionals to dining staff to activity leaders are working together, looking out for one another, and going above and beyond to make every moment special.

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To learn more about the 15 Senior Lifestyle communities in Ohio, please visit the Senior Lifestyle website at www.seniorlifestyle.com. Click “Find Your Community” in the upper-right-hand corner, and you can view an interactive map that features each Senior Lifestyle community in Ohio. Each community page allows you to explore lifestyle options, programming, apartment floor plans and meet the Executive Director. If you feel ready to tour a community, simply give them a call. Be sure to schedule your tour around lunch, and come hungry!

Save the dates:
May 23 & 24, 2016 – OALA’s Spring Conference!
• To pay your RCF license renewal fee online through your EIDC account during January 2016. License fees are the same this year as last: $320 for each 50 beds or part thereof. If the fee is not paid in January, a late fee of $100 per week (or part thereof) will be charged. If the fee, and any late fees, are not paid by February 15, 2016, ODH could revoke the license.

• To register for OALA’s Winter Webinars. Topics include the ALW, dementia issues and the RCF rules. The first 3 webinars are all Group Rate, meaning a community can pay one fee and receive CEUs for multiple individuals. The fourth webinar is individual rate. .... http://www.ohioassistedliving.org/events.html

• To pay your OALA dues by January 31, 2016. If you need to make arrangements to pay semiannually or quarterly, please contact the OALA office.

• To save the Dates, May 23 & 24, 2015, OALA’s Annual Spring Conference