

RHODE ISLAND DEPARTMENT OF HEALTH
LICENSING ASSISTED LIVING RESIDENCES HEARING
FEBRUARY 15, 2022

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1 MS. GAREAU: Hello and welcome. We are here
2 today to conduct a public hearing concerning the
3 rules and regulations for Licensing Assisted Living
4 Residences (216-RICR-40-10-2). This hearing is being
5 conducted under the provisions of R.I.G.L. §23-17 and
6 §42-35. Today is Tuesday, February 15, 2022.

7 My name is Lauren Gareau, Rules Coordinator for
8 the Rhode Island Department of Health, also known as
9 RIDOH. I will be the hearing officer for today's
10 proceeding.

11 Before we start and to prevent any interruptions
12 of the proceedings, at this time I'd like to ask
13 those of you with cell phones, pagers, and watch
14 alarms to please turn them off or set them to silent
15 or vibrate.

16 Everyone entering a state facility, regardless
17 of vaccination status, is required to wear a face
18 covering. However, you may remove your face covering
19 when it is your turn to speak.

20 Please note that there are two exits located at
21 the rear of this auditorium. Emergency exits are
22 located on this level of the building in the far left
23 and near right corners of the floor. In the event of

1 an emergency or fire alarm, please proceed quickly
2 and calmly and follow the exit signs to the nearest
3 emergency exit. The seating capacity of the room
4 will be enforced, and therefore the number of persons
5 participating in the hearing may be limited at any
6 given time in order to comply with the safety and
7 fire codes.

8 The purpose of the hearing today is to afford
9 interested parties an opportunity to comment on the
10 proposed regulations, allow as many people as
11 possible to be heard, and to ensure an accurate
12 record of all comments is obtained. This hearing is
13 intended for your participation only, and it is not
14 intended to provide a forum for discussing debating,
15 arguing, or otherwise having a dialog on the
16 regulations before us with RIDOH personnel as part of
17 this public hearing.

18 If you would like to speak, the procedure we
19 will use as follows:

20 1. Please register to speak at the rear of the
21 room.

22 2. Speakers will be taken in order of
23 registration.

1 3. Up to five minutes will be allowed for your
2 presentation unless the lack of speakers allows for
3 additional time. If you are reading off of a
4 prepared document, such as a paper copy or electronic
5 version of your testimony, we politely request that
6 you speak clearly and at an unhurried pace so that
7 the recorder, which is located here, can
8 appropriately capture your testimony in its entirety.

9 4. I will indicate when you have one minute of
10 time remaining, if you are unable to complete your
11 testimony in the time allotted, you may have an
12 opportunity to speak if any time is remaining after
13 the other speakers who have signed up complete their
14 testimony.

15 5. When you are called, come to the podium,
16 identify yourself by name and affiliation, if any.
17 Please spell your name and give the full name of your
18 organization if you use an acronym. Make your
19 presentation and make sure to conclude within the
20 allotted time limit of five minutes. If you have a
21 written copy of your statement, we would appreciate
22 it if you can provide it for the record. If you read
23 from an electronic version of your testimony, we

1 would appreciate it if you could provide a hard copy
2 or e-mail us your testimony.

3 In accordance with the requirements of the
4 Administrative Procedure Act, additional written
5 comments on these proposed amendments will be
6 accepted by Saturday, February 26, 2022.

7 After the conclusion of the public comment
8 period, RIDOH has four options under state law. The
9 first option is to file the regulations as posted
10 with the Secretary of State. The second option is to
11 file with minor technical changes, such as correcting
12 spelling, punctuation, etcetera. The third option is
13 to make non-technical changes in what you see before
14 you today which will be addressed in RIDOH's Concise
15 Explanatory Statement and filed with the final
16 regulations and could also necessitate a new public
17 hearing and associated public notice posting. And
18 the fourth option is to not file the proposed
19 regulations, in which case the current regulations
20 would remain in effect. Unless otherwise specified
21 by law, regulation, or the at the discretion of
22 RIDOH, once filed, the regulations will become
23 effective twenty (20) days after filing and have the

1 force of law upon that date.

2 Are there any questions on how the public
3 hearing will be conducted today? Okay.

4 At this time, we will introduce the following
5 exhibits, which will be part of the record. The
6 first exhibit is the notice of proposed rule-making
7 posted on the Rhode Island Secretary of State on
8 January 27, 2022. The second exhibit is a copy of
9 the proposed regulations with revisions indicated,
10 posted to the Rhode Island Secretary of State on
11 January 27, 2022. The third exhibit is a copy of
12 existing regulations for Licensing of Nursing Homes,
13 last filed with the Secretary of State in April 2018.
14 The fourth exhibit is the concise statement of
15 proposed non-technical amendments to the regulations,
16 filed with the Secretary of State on January 27,
17 2022. The fifth exhibit is a copy of the benefit-
18 cost analysis, filed with the Secretary of State on
19 January 27, 2022. The sixth exhibit is a copy of
20 Rhode Island General Laws §23-17.4-10, the enabling
21 statute for these regulations. And seventh and final
22 exhibit is a copy of the e-mail dated January 26,
23 2022, from the Office of Regulatory Reform confirming

1 that RIDOH was authorized to move forward with
2 promulgation of these regulations.

3 Tonight, we are seeking comments from the public
4 on the proposed Licensing of Assisted Living
5 Residences regulations with the indicated revisions
6 that can be found on the Rhode Island Secretary of
7 State. At this time, I would like to call upon the
8 first speaker, who I believe is David.

9 MR. BODAN: Hi, David Bodah, D-A-V-I-D B-O-D-A-
10 H, Executive Director of Rhode Island Assisted Living
11 Association. Good afternoon, again, my name is David
12 Bodah. I'm the Executive Director of the Rhode
13 Island Assisted Living Association and (inaudible)
14 Association representing assisted living communities
15 throughout Rhode Island. RIALA's membership takes
16 issue with portions of three of the proposed sections
17 of the amendment, the two hour reporting requirement,
18 the essential caregiver section, and the COVID
19 testing section.

20 Section 2.4.17(D), which requires reporting
21 within two hours of an allegation of abuse or serious
22 bodily injury we feel is an unreasonable timeframe
23 considering the nature of assisted living residences.

1 Assisted living residences are not healthcare
2 facilities or nursing homes and should not be treated
3 as such. They have different building
4 configurations, different staffing levels, and
5 different resident needs. Assisted living facilities
6 do not have staff present who are qualified to make
7 these reports on a 24/7 basis, such as a nurse. So,
8 it would be functionally impossible to comply with a
9 two hour reporting requirement. The drafting is also
10 unclear because if a resident has been 'abused,
11 exploited, neglected, or mistreated' then the
12 incident will likely be considered 'abuse based on
13 the regulations definition of abuse, and all such
14 incidents would need to be reported within the two
15 hours.' If the requirement for faster reporting is
16 intended to mean abuse and serious bodily injury,
17 then the section should be added to make this more
18 clear.

19 Section 2.4.19 also creates heavy burdens and
20 costs for assisted living residences. Beyond what is
21 required for this program pursuant to R.I.G.L §23-
22 17.5-37, the requirements relating to the statute
23 should only be in place when normal visitation is not

1 allowed by the facilities, which is currently open to
2 all, even during this pandemic. The benefit-cost
3 analysis produced by the Department related to this
4 section states that documentation and training
5 requirements of this regulation will be performed by
6 social workers, but assisted living facilities do not
7 employ social workers. Again, to reiterate, assisted
8 living residences are not health care facilities.
9 Additionally, the benefit-cost analysis calculations
10 severely underrepresents the time and cost that will
11 need to be required by assisted living communities to
12 comply with these regulations and all the associated
13 training.

14 Certain regulation sections are not required by
15 the statute and create compliance and safety issues
16 for assisted living communities. For example,
17 assisted living residences are not permitted to
18 impose travel restrictions on essential caregivers
19 that are more restricted than those for Rhode Island
20 residents per the state of emergency. Further, the
21 regulations do not permit an assisted living
22 residence to require that essential caregivers be
23 vaccinated. This also impacts testing requirements

1 since unvaccinated caregivers will need to be tested
2 more frequently. And per the proposed regulations,
3 testing for caregivers cannot be more stringent than
4 surveillance testing for staff who are required to be
5 vaccinated. None of these limitations is required by
6 statute, and when all these restrictions are combined
7 together, there is a potential for safety issues
8 within the assisted living residences. As to the
9 testing requirements for caregivers, the test, the
10 cost of testing should be the responsibility of the
11 caregivers, similarly to the cost for personal
12 protective equipment, or PPE, but the current
13 drafting does not make that clear. The requirement
14 for a reasonable degree of privacy could be in
15 conflict with communities having to monitor testing
16 requirements and enforce all safety procedures,
17 training, and record keeping.

18 Requiring residences to provide training to
19 essential caregivers is beyond what is required by
20 the R.I.G.L §23-17.5-37 and will be an unfair and
21 unnecessary cost and time burden on assisted living
22 facilities. This is particularly true because each
23 and every resident can have one essential caregiver

1 at a time, and that caregiver could be changed at any
2 time. For example, someone may change their
3 essential caregiver weekly, and each new person would
4 need to undergo training and also be entered into a
5 tracking system for compliance with testing, and
6 travel, and other requirements. How long will
7 training take? We think a lot longer than the two
8 hours that was listed in the document.

9 And thirdly, the COVID testing requirements for
10 residences and personnel proposed by 2-4-32 are
11 strongly opposed by RIALA and its members. These
12 requirements represent substantial and unsustainable
13 costs for assisted living residences, for the tests
14 themselves, as well as for related supplies and
15 staffing needs to comply. COVID is becoming endemic.
16 Testing could continue in perpetuity based on these
17 regulations, and to do so is costly and unfair, and
18 unnecessary. This is essentially an unfunded
19 mandate. The goal for safety in assisted living
20 facilities should be good infection control practices
21 and maintaining up to date vaccines. Testing will
22 likely not remain free per the Department's own
23 benefit cost analysis. PCR testing comes at a high

1 cost separate from lab availability issues. Cost
2 must be higher than - - cost will be much higher than
3 estimated in the benefit-cost analysis based on
4 assisted living residences previous experience.
5 Document, and cost, and time required to comply with
6 record keeping will also be significant.

7 Testing of unvaccinated residents. The moderate
8 transmission rate of moderate to trigger this testing
9 is a very low threshold. Based on historical data,
10 testing will likely be required in perpetuity. What
11 is meant to be done with unvaccinated residents who
12 refuse to be tested? It simply says, 'policies and
13 procedures must be in place'.

14 Testing of unvaccinated personnel. Rates to
15 trigger this testing are still very low considering
16 that COVID is becoming endemic. Our state has been
17 at a rate that would require testing consistently in
18 the past months. Testing is not sustainable in
19 perpetuity without provisions to handle the cost and
20 staff required. Insurance compliance issues will be
21 created. Regulations require that assisted living
22 residences must transmit insurance information to the
23 testing lab before using other methods of payment.

1 However, many assisted living facilities do not have
2 the ability to bill insurance because they lack the
3 appropriate federal identification numbers. How is
4 this meant to be addressed? Assisted living
5 residences, again, are not healthcare facilities.
6 The proposed regulations state that personnel can't
7 be required to pay any out-of-pocket costs, including
8 co-pays or deductibles, for required testing. Even
9 if insurance pays for testing, it is likely that co-
10 pays will be required and deductibles will be
11 increased for communities due to the frequency of
12 testing required.

13 In conclusion, moving forward, it is my hope and
14 those of my members that RIALA would be a sounding
15 board to work alongside our colleagues at the
16 Department of Health to discuss any future amendments
17 to regulations affecting the licensing of assisted
18 living residences. We hope to be a resource for
19 health adding real world on the ground context and
20 consequences that hopefully create guidance that is
21 reasonable and avoids any unintended consequences.
22 Thank you.

23 MS. GAREAU: Thank you. Jim Nyberg.

1 MR. NYBERG: Good afternoon. Jim Nyberg,
2 Executive Director of Leading Age Rhode Island. On
3 behalf of the members of Leading Age Rhode Island,
4 thank you for this opportunity to express our
5 thoughts on the proposed regulations for licensing of
6 assisted living residences.

7 As we all know, assisted living residences are a
8 different model of care than nursing facilities or
9 other providers, a theme which underlies some of our
10 questions or comments, which are as follows.

11 Section 2.4.10, Change of Ownership, Operation,
12 and/or Location. Subsection D extends the
13 notification period should an assisted living close
14 from 30 to 60 days. I'm not aware of any issues in
15 the past when residences have closed, so we're just
16 curious about the reason for this change.

17 Section 2.4.17, Reporting Requirements.
18 Subsection D adds language requiring an assisted
19 living employee to report suspicion of abuse,
20 exploitation, neglect, or mistreatment not later than
21 two hours after the allegation is made if it involves
22 abuse or serious bodily harm. The previous
23 requirement was within 24 hours. Given the staffing

1 patterns in assisted living residences, this could
2 present some challenges, especially how it is worded
3 abuse or serious bodily harm. It could place the
4 burden of judgement on one staff member to determine
5 what constitutes abuse, especially when dealing with
6 a resident with dementia. It would be helpful to
7 clarify the rationale for this change in timeframe or
8 consider modifying it.

9 Section 2.4.19, Essential Caregivers During a
10 Declared State of Emergency. Subsection D(2) states
11 that essential caregivers shall not be required to be
12 vaccinated as a condition of being an essential
13 caregiver. We don't think this makes sense given the
14 vaccine mandate for all healthcare professionals and
15 that anyone who may have direct patient contact in an
16 assisted living residence. These essential
17 caregivers are inside the building and providing
18 hands on assistance to their loved ones, so they
19 should be vaccinated. So, we strongly urge RIDOH to
20 delete this language and insert language that
21 essential care givers shall be required to be
22 vaccinated as a condition of being an essential
23 caregiver.

1 On a separate note, we would like to see
2 language added focused on immunity for providers
3 should there be an accident when an essential
4 caregiver is providing services to a resident. The
5 residence should not be held liable legally or issued
6 a deficiency should something happen that is out of
7 its control. For example, an essential caregiver
8 doesn't comply with a care plan, a resident falls
9 while under the care of an essential caregiver,
10 etcetera.

11 Lastly, Subsection D(6) references nursing
12 homes, not assisted living residence, which we assume
13 is just a typo.

14 We may have additional written comments to
15 submit, but that's all for today. Thank you very
16 much.

17 MR. GALLIGAN: Thank you. So, it's the Office
18 of Health Regulation's policy to stick around for
19 about 40 minutes just in case of any late comers.
20 So, you're more than welcome to leave. We're just
21 going to hang out here for about another 15 or so
22 minutes in case anybody else decides to show up. But
23 feel free to talk amongst yourselves. So, you don't

1 have to sit in silence.

2 (HEARING PAUSED)

3 MR. GALLIGAN: Thank you all for coming. This
4 hearing is now closed.

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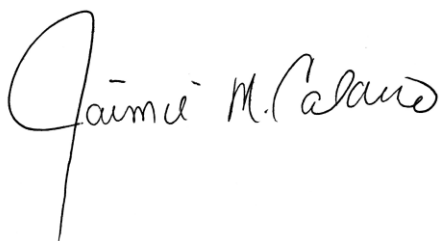
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C E R T I F I C A T I O N

I hereby certify that the transcription of the enclosed audio file(s) was done accurately and to the best of my ability.

A handwritten signature in black ink that reads "Jaimie M. Calouro". The signature is written in a cursive style with a large initial 'J'.

Jaimie Calouro

Date: March 22, 2022