

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 410 Department or Agency State Health Planning and Development Agency (Statewide Health Coordinating Council)

Rule No. 410-2-4-.04

Rule Title: Limited Care Facilities – Specialty Care Assisted Living Facilities

New  X Amend  Repeal  Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

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Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Alva M. Lambert

Date 5-3-12

DATE FILED  
(STAMP)



## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870

MONTGOMERY, ALABAMA 36104

### NOTICE OF INTENDED ACTION

AGENCY NAME: STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
(Statewide Health Coordinating Council)

RULE NO. & TITLE: 410-2-4-.04 Limited Care Facilities – Specialty Care Assisted Living Facilities

INTENDED ACTION:

The State Health Planning and Development Agency (Statewide Health Coordinating Council) proposes to amend the above-styled section of the *Alabama State Health Plan*.

SUBSTANCE OF PROPOSED ACTION:

To address health planning concerns relating to Specialty Care Assisted Living Facilities in situations involving a sustained high occupancy rate for either a county or a single facility.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

In response to this Proposed Rule, all interested persons are invited to submit data, views, comments and/or arguments, orally or in writing. Any and all such data, comments, arguments and/or requests to orally address the Statewide Health Coordinating Council (SHCC) shall be made in writing on or before, July 9, 2012, and shall be made to:

Nicole Horn, Executive Secretary  
State Health Planning and Development Agency  
P. O. Box 303025  
Montgomery, Alabama 36130-3025

On August 3, 2012, at 10:00 a.m., the SHCC shall conduct a public hearing in the Capitol Auditorium, Alabama State Capitol, Montgomery, Alabama, at which time it shall consider the Proposed Rule along with all written and oral submissions in respect to the Proposed Rule. Only those interested persons who have made timely written requests will be afforded the opportunity to speak.

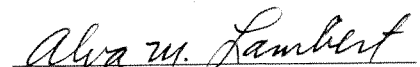
Copies of the proposed changes are available for review at 100 North Union Street, RSA Union Building, Suite 870, Montgomery, Alabama. Phone (334) 242-4103 or visit the office Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

July 9, 2012

CONTACT PERSON AT AGENCY:

Nicole Horn  
100 North Union Street  
RSA Union, STE 870  
Montgomery, AL 36104  
(334) 242-4103

  
Alva M. Lambert, Executive Director

#### 410-2-4-.04 Limited Care Facilities – Specialty Care Assisted Living Facilities

(1) Definition. Specialty Care Assisted Living Facilities are intermediate care facilities which provide their residents with increased care and/or supervision which is designed to address the residents' special needs due to the onset of dementia, Alzheimer's disease or similar cognitive impairment and which is in addition to assistance with normal daily activities including, but not limited to, restriction of egress for residents where appropriate and necessary to protect the resident and which require a license from the Department of Public as a Specialty Care Assisted Living Facilities pursuant to Ala. Admin. Code § 420-5-20, et seq.

#### (2) Specialty Care Assisted Living Facility Bed Need Methodology

(a) Purpose. The purpose of this specialty care assisted living facility bed need methodology is to identify, by county, the number of beds needed to assure the continued availability, accessibility, and affordability of quality care for residents of Alabama.

(b) General. Formulation of this bed need methodology was accomplished by a committee of the Statewide Health Coordinating Council (SHCC). The committee which provided its recommendations to the SHCC, was composed of providers and consumers of health care. Only the SHCC, with the Governor's final approval, can make changes to this methodology except that the SHPDA staff shall annually update bed need projections and inventories to reflect more current population and utilization statistics. Such updated information is available for a fee upon request. Adjustments are addressed in paragraph (E).

(c) Basic Methodology. Considering the availability of more community and home based services for the elderly in Alabama, there should be a minimum of 4 beds per 1,000 population 65 and older for each county.

The bed need formula is as follows:

$$(4 \text{ beds per thousand}) \times (\text{population 65 and older}) = \text{Projected Bed Need}$$

#### (d) Planning Policies

1. Projects to develop specialty care assisted living facilities or units in areas where there exist medically underserved, low income, or minority populations should be given priority over projects not being developed in these critical areas when the project to develop specialty care assisted living facilities in areas where there exists medically underserved, low income or minority populations is not more costly to develop than other like projects.

2. Bed need projections will be based on a three-year planning horizon.

3. Planning will be on a countywide basis.

4. Subject to SHCC adjustments, no beds will be added in any county where that county's projected ratio exceeds 4 beds per 1,000 population 65 and older.

5. When any specialty care assisted living facility relinquishes its license to operate, either voluntarily or involuntarily other than by a Certificate of Need approved transfer, or by obtaining title by a foreclosure as specified in the opinion rendered by the Alabama Attorney General, November 17, 1980, the need for the facility and its resources will automatically be eliminated from the facilities portion of the State Health Plan. The new bed need requirement in the county where the facility was located will be that number which will bring the county ratio up to 4 beds per 1,000 population 65 and older.

6. Additional need may be shown in situations involving a sustained high occupancy rate either for a county or for a single facility. An applicant may apply for additional beds, and thus the establishment of need above and beyond the standard methodology, utilizing one of the following two policies. Once additional beds have been applied for under one of the policies, that applicant shall not qualify to apply for additional beds under either of these policies unless and until the established time limits listed below have passed. All CON authorized SCALF beds shall be included in consideration of occupancy rate and bed need.

(i) If the occupancy rate for a county is greater than 92% utilizing the census data in the most recent full year 'Annual Report(s) for Specialty Care Assisted Living Facilities (Form DM-1)' published by or filed with SHPDA, an additional need of the greater of either ten percent (10%) of the current total CON Authorized bed capacity of that county or sixteen (16) total beds may be approved for either the creation of a new facility or for the expansion of existing facilities within that county. However, due to the priority of providing the most cost effective health care services available, a new facility created under this policy shall only be allowed through the conversion of existing beds at an Assisted Living Facility currently in possession of a regular, non-probationary license from the Alabama Department of Public Health. Once additional need has been shown under this policy, no new need shall be shown in that county based upon this rule for twenty-four (24) months following issuance of the initial CON, to allow for the impact of those beds in that county to be analyzed. Should the initial applicant for beds in a county not apply for the total number of beds allowed to be created under this rule, the remaining beds would then be available to be applied for by other providers in the county, so long as said providers meet the conditions listed in this rule.

(ii) If the occupancy rate for a single facility is greater than 92% utilizing the census data in the last two (2) most recent full year 'Annual Report(s) for Specialty Care Assisted Living Facilities (Form DM-1)' published by or filed with SHPDA, irrespective of the total occupancy rate of the county over that time period, up to sixteen (16) additional beds may be approved for the expansion of that facility only. Once additional beds have been approved under this policy, no new beds shall be approved for that facility for twenty-four (24) months following issuance of the CON, to allow for the impact of those beds at that facility to be analyzed.

7. No application for the establishment of a new, freestanding SCALF shall be approved for fewer than sixteen (16) beds, to allow for the financial feasibility and viability of a project. Because of this, need may be adjusted by the Agency for any county currently showing a need of more than zero (0) but fewer than sixteen (16) total beds to a total need of sixteen (16) new beds, but only in the consideration of an application for the construction of a new facility in that county. Need shall not be adjusted in consideration of an application involving the expansion of a currently authorized and licensed SCALF or for the conversion of beds at an existing Assisted Living Facility.

8. Any CON Application filed by a licensed SCALF shall not be deemed complete until, and unless:

(i) The applicant has submitted all survey information requested by SHPDA prior to the application date; and

(ii) The SHPDA Executive Director determines that the survey information is complete.

9. No licensed SCALF filing an intervention notice or statement in opposition in any CON proceeding may cite or otherwise seek consideration by SHPDA of such facility's utilization data until, and unless:

(i) The intervenor or opponent has submitted all survey information requested by SHPDA prior to the application date; and

(ii) The SHPDA Executive Director determines that the survey information is complete.

(e) Adjustments. The bed need, as determined by the methodology, is subject to adjustments by the SHCC. The specialty care assisted living facility bed need may need to be adjusted by the SHCC if an applicant can prove that the identified needs of a targeted population are not being met by existing specialty care assisted living facilities in the county of the targeted population.

(f) Notwithstanding the foregoing, any application for certificate of need for specialty care assisted living facility beds for which a proper letter of intent was duly filed with SHPDA prior to the adoption of the bed need methodology shall not be bound by this bed need methodology.

(g) The determination of need for specialty care assisted living facility beds shall not be linked to the number of existing assisted living beds in the county.

Author: Statewide Health Coordinating Council  
Statutory Authority: § 22-21-260(4), Code of Alabama, 1975.  
History: Effective November 22, 2004.