

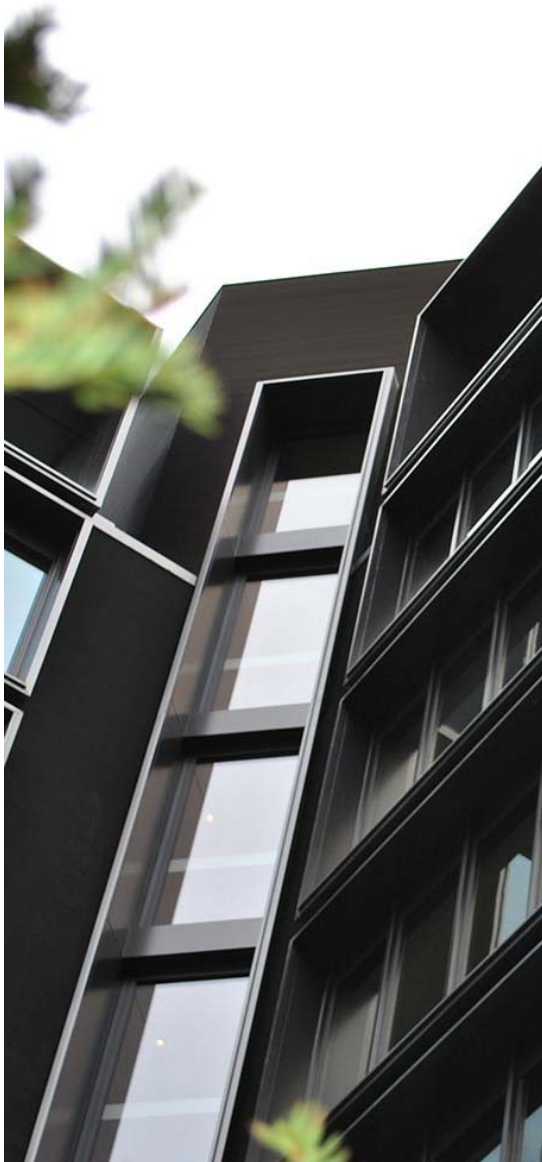
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# Senior residential facilities - Amended rules

Ordinance 349/2023 of November 13 amends the rules for the organization, functioning and setting-up of senior residential facilities (“ERPI”).

Portugal - Legal Flash

November 21, 2023



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## Key aspects

- The Ordinance establishes simplified rules for certain cases of capacity expansion.
- It amends the rules for setting up in buildings and for functional areas.
- It simplifies several rules for ERPIs with a capacity of up to 20 residents.
- It establishes new obligations regarding residents' service agreements.
- To promote service quality, the Ordinance establishes an individual care plan (“ICP”), employee training, and a technician with quality management duties.



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## New rules on increasing capacity

### > Extension work

Ordinance 349/2023 of November 13 (the “Ordinance”) ensures that, in the case of extension work to be carried out on residential facilities with an operating license or provisional operating permit (or, where applicable, a cooperation agreement with the Social Security Department), **which involves a capacity increase of up to 30%**, only the technical rules established in schedule II to the Ordinance will have to be complied with in respect of the new area to be extended. Therefore, the existing area is not subject to these rules, unless the extension work involves a capacity increase of more than 30%.

### > Updating the maximum capacity for accommodating adults discharged from clinical and social care

The Ordinance establishes that the maximum capacity of the facility can be updated by reviewing the cooperation agreement, if:

- > the number of places created is intended to accommodate adults discharged from clinical and social care (see Ordinance schedule I, sheet 6, and the legislation on discharge from hospital).

In effect, it establishes the possibility of authorizing the accommodation of adults discharged from clinical and social care:

- > in extra beds in single rooms and/or double rooms, as long as the minimum accommodation area defined per user is met;
- > in isolation room(s);
- > in these cases, for exceptional and force majeure reasons, the maximum capacity of the facility must be updated.

The Ordinance revokes the legal provision<sup>1</sup> whereby “*The maximum capacity of each apartment/villa is for four residents, with a maximum per-room capacity of two residents.*”

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## General setting-up rules and functional areas

ERPis with a capacity of more than 20 residents should preferably operate in a separate building or a separate building complex.

The Ordinance establishes that ERPis can now be set up in modular and prefabricated buildings, in accordance with the legislation in force.

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<sup>1</sup> Provision contained in Sheet 6 of Annex I of Order 67/2012, of March 21.

The Ordinance extends the rules of the General Regulation on Urban Buildings (“RGEU”) to:

- areas and ceiling heights;
- residential accommodation apartments and houses, which must now comply with the areas established in the RGEU and the bedroom areas established in schedule II to the Ordinance.

Lawmakers have also made several amendments to the technical rules for functional areas (schedule I to the Ordinance).

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## **Simplifying rules for ERPIs with a capacity of up to 20 residents**

In the preamble to the Ordinance, lawmakers clarify that specific rules must be created for small residential facilities.

For example, for ERPIs with a capacity of up to 20 residents, it establishes that:

- the main entrance and service entrance can be the same;
- there is no obligation to have an exclusive reception area;
- there is no need to have an administrative and technical services office if this does not affect the provision of care and the institution’s staff are guaranteed appropriate conditions.
- there is no need for an employee lounge;
- the same rooms can be used for both leisure and dining areas, subject to the minimum areas per resident and the simultaneous use percentage;
- there is no need for a soiled linen room;
- the rules on room types are (i) at least one single room and (ii) no more than one triple room. The percentages established in the Ordinance (i) of at least 20% single rooms and (ii) no more than 20% triple rooms do not apply.
- there is no obligation to provide parking spaces;
- there should be a minimum laundry area of 6 m<sup>2</sup>, not 12m<sup>2</sup>;
- there is no need for an exclusive nursing station;
- there is no need for exclusive support service areas, if the storage needs for food and cleaning products are met.
- functional areas can be dispensed with if this does not jeopardize the provision of adequate care to the residents and the appropriate conditions for the institution’s staff are guaranteed.

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## New obligations regarding the service agreement

### ➤ Elements of the agreement

Besides the obligation to include the parties' rights and obligations in service agreements with residents or their families, the Ordinance also establishes that the agreements must include an itemized list of the services, activities and care to be provided to residents which are included in the monthly fee.

### ➤ Knowledge and understanding of the agreement

The Ordinance also establishes that the ERPI has a duty to guarantee and ensure that the user is aware of and understands the content of: (i) the service agreement, (ii) the internal regulation, and (iii) the individual care plan.

### ➤ Inclusion of the agreement and its termination in the resident's individual file

It is also important to emphasize that the resident's individual file must now contain a copy of the service agreement. This file must also include the termination of the services agreement, activities and care, indicating the date and reason.

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## Service quality

### ➤ Individual care plan ("ICP")

One of the main developments is the requirement for an individual care plan (ICP) for each resident which must include the care, services and activities to be carried out, based on a diagnostic test. The ICP must be monitored and evaluated at intervals of no more than six months.

### ➤ Initial and ongoing training for ERPI workers

Another development is the obligation for initial and ongoing training for ERPI workers, which can be provided in a work setting. This training can be provided by the Active Aging Skills Center.

### ➤ Quality management technician

The Ordinance creates the position of a technician who has quality management duties, and who must be appointed by the ERPI management. This position can be held in conjunction with other duties in the ERPI, and can also cover several facilities.

The quality indicators will be established by order of the member of the government responsible for employment, solidarity and social security, after consulting the social sector representatives and the for-profit sector.

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