

# **THE MASSACHUSETTS EXECUTIVE OFFICE OF ELDER AFFAIRS**



**Jennifer Davis Carey, Secretary**

**Amended Assisted Living Regulations**

**October 2006**



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

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Note: *Italics* indicate new language; underscores indicate our emphasis.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Initial and Subsequent Assessments– 651 CMR 12.04(7)

Purpose: to ensure the Resident's needs and preferences are accurately incorporated & that the Residence is capable of meeting those needs.

- ❖ If unable to meet needs, document alternative methods of meeting needs (e.g., VNA services, risk agreement).

### Assessment Content:

1. Allergies;
2. Diagnoses;
3. Medications (including dosage, frequency & route);
4. Dietary needs;
  - Therapeutic diets
  - Special preparation, e.g., cut food, location of food on plate
5. Level of personal care needs, including ability to perform ADLs and IADLs;
6. Ability of the Resident to manage medication (including PRNs);



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Initial and Subsequent Assessments Content (cont.)

7. *History of psychosocial issues, disruptive behaviors, or behaviors which may present a risk to the health and safety of the Resident or others;*
8. *Name of any Legal Representative or any other person who has decision-making authority for the Resident and the scope of his or her authority;*
9. *Need for assistance in emergency situations; and*
10. *Signatures & dates.*

The “assessment” can be several documents including, physician's statement, functional assessment, MDS.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Initial Assessment— 651 CMR 12.04(7)

	Non-Physician Component	Physician Component
<b>Who completes this component of assessment</b>	Residence staff	Physician or authorized practitioner
<b>When needs to be completed</b>	By move-in date	No more than 3 months prior to move-in
<b>Purpose of assessment</b>	To determine service needs & preferences and the ability of the Residence to meet those needs	To determine the prospective Resident's physical cognitive, and psychosocial condition
<b>Who responsible for completing</b>	The Residence	The Resident*

\* With the Resident's consent, Residence must try to obtain a completed assessment from a Resident's physician. Document attempts to do so.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Initial and Subsequent Assessments (cont.)

- ❖ Thereafter review the assessment upon identification of a significant change in the Resident's condition, e.g.,
  - Move to SCR
  - Any change that results in change of fee
  - Significant change in needs listed in 12.04(7)(b)(1) through (8)
  - Other changes pursuant to Residence's policy
  
- ❖ But not less than once every six months
  
- ❖ Involve the prospective Resident, the Legal Representative, and the Resident Representative to the maximum extent possible (and authorized)
  - **Need to see signatures/initials, date of everyone involved**



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Initial and Subsequent Assessments (cont.)

- ❖ Do not need to complete a new assessment form each time it is updated. Changes may be written on the original document as long as:
  1. Everyone who participates in the assessment process signs and dates the form to document their participation;
  2. The Resident's current needs and preferences are accurately documented;
  3. All additions or deletions are clear and legible;
  4. All changes are signed or initialed and dated by the Service Coordinator who conducted the assessment, so that Elder Affairs can determine when each change was made
  5. All notations are made in pen; and
  6. Liquid paper, correction tape or similar products are not used.
- ❖ If no change is necessary, document that on the assessment and sign and date the assessment at the time it was determined that no change was needed.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Service Plans— 651 CMR 12.04(8)

Service Plan must include:

- ❖ *The Resident's goals;*
- ❖ Frequency and duration of all services;
- ❖ Manner in which the Residence provides 24 hour per day, on site staff capability;
- ❖ Manner in which the Residence shall provide for personal emergency response devices or procedures;
- ❖ Details of the types of assistance with medications that the Residence shall provide;
- ❖ Description of services that will be provided by outside agency/provider;
- ❖ Dietary needs;
- ❖ *Special Care Resident— must indicate the enrichment activities; and*
- ❖ *Stove access (12.04(1)).*



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Service Plans (cont.)

- ❖ *Review Service Plan within 30 days of move-in*
  - service plan review, update assessment if necessary
- ❖ Service plan shall be based on:
  - *A current assessment; and*
  - On information provided by the Resident, his or her Legal Representative or Resident Representative.
  - Date of the assessment review should correspond to service plan review.
- ❖ All service plans shall be signed and dated by the Resident or his or her Legal Representative, and by the Sponsor or his or her representative.
- ❖ Each service plan shall be reviewed at least once every 6 months to:
  - *Assess achievement of the Resident's goals; and*
  - *Determine if the services remain appropriate to the Resident's needs and the ability of the Residence to meet those needs.*
- ❖ Do not need to complete a new service plan form each time the plan is updated (see earlier section regarding updated assessments).



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Service Coordination Requirements– 651 CMR 12.04(3)

- ❖ Designate at least one Service Coordinator who shall be...primarily responsible for:
  - Reviewing with the Resident the assessment, and service options available;
  - Developing, reviewing and revising each Resident's service plan;
  - Implementation of the service plan;
  - Monitoring the Resident's needs and the services provided;
  - Coordinating with and participating in the Quality Improvement and Assurance program; and
  - Maintaining complete and accurate records of service plans.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Resident Record— 651 CMR 12.05(1)

- ❖ Progress notes when there is a significant occurrences, either observed or reported including:
  - Significant or continued change in behavior or memory;
  - Incidents involving injury, trauma, illness, or abuse or neglect;
  - Alleged or actual violations of the Resident's rights; and
  - Changes in the service plan.

Following can be in a separate location:

- ❖ Guardianship orders, authorized powers of attorney, health care proxies, living wills, DNR forms provided that:
  - Existence and location is conspicuously documented in the record; and
  - Are immediately available in case of an emergency.
- ❖ **CHANGE:** Introductory Visits must be in Resident Record!



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Special Care Residence (SCR)— 651 CMR 12.04(5)

- ❖ Definition: “The Residence in its entirety or a separate and distinct section within the Residence that provides care and services for one or more Residents, and which is designed to address the specialized needs of individuals, including those who may need assistance in directing their own care due to cognitive or other impairments.”

Applies to special programs such as:

Dementia/Alzheimer’s,  
Huntington's Disease, and  
Mental Health concerns.

- ❖ “Any Residence that chooses to advertise, market, otherwise promote or provide special care for Residents shall administer such care and services in accordance with the requirements of this section in addition to all other requirements of 651 CMR 12.00 *et seq.*”



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Special Care Residence (cont.)

SCRs must submit an operating plan which consists of:

- ❖ Description of Special Care population;
- ❖ A description of the physical design of the structure and the unit, and the physical environment (e.g., contrasting paint colors, special lighting);
- ❖ A description of specialized safety features;
- ❖ A 24 hour preparedness plan which is based upon the assessed needs of the Residents for assistance in an emergency situation such as the need to evacuate the building;
- ❖ A policy to ensure Resident safety during power outages or other situations when the locking or unlocking mechanisms of the doors may not work; and
- ❖ Policies and procedures to assess and reduce the risk of potential hazards in the physical environment related to the special characteristics of the population served. At a minimum, this policy shall cover the following:
  - Limiting odors and ensuring sanitary environment;
  - Response to emergency situations (e.g., when to call 911, what to do if a Resident falls); and
  - Storage of potentially hazardous materials (e.g., cleaning materials, oxygen).



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Special Care Residence (cont.)

#### SCR Operating Plan (cont.)

- ❖ Policies & procedures address unsafe behaviors including:
  1. Wandering;
  2. Verbally aggressive behavior;
  3. Physically aggressive behavior; and
  4. Coercive or inappropriate sexual behavior.
  
- ❖ All policies must include the following information:
  1. How to determine when such a behavior is present;
  2. How to manage the behavior appropriately;
  3. How to report and document the behavior, including when an outside agency must be notified (e.g., Protective Services);
  4. Guidelines for when the behavior may require the Resident to leave the SCR; and
  5. The title of the employee(s) responsible for implementation of the various aspects of each policy.
  
- ❖ A description of the enrichment activities which will be regularly available;
- ❖ An explanation of any specialized staff training; and
- ❖ Policies regarding the transition of a Resident in or out of the SCR.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### SCR Planned Activity Program

- ❖ One activity every day including holidays & weekends.
  - Meals do not count as an activity.
- ❖ A schedule of activities must be provided to Residents on a regular basis.
  - Accessible format
- ❖ Address Resident needs in the following areas:
  - Gross motor activities;
  - Self-care activities;
  - Social activities; and
  - Sensory and memory enhancement activities.
- ❖ Activities offered shall be based on the needs of the SCR population, for example:
  - SCR for people with Huntington's disease may focus on physical activities to increase or maintain strength and balance
  - SCR for people with dementia can utilize a Habilitation-type activity more appropriate for Residents with cognitive impairments



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Miscellaneous SCR Requirements

- ❖ The Special Care Residence shall have sufficient staff qualified by training and experience awake and on duty at all times.
- ❖ The Special Care Residence shall document and make available upon request all plans, policies and procedures required under 651 CMR 12.04(5)(a) and (b) in accordance with the disclosure requirements of 651 CMR 12.08(3).
- ❖ Review the operations of the SCR twice each year. The reviews may be conducted as part of the Quality Improvement and Assurance program prescribed under 651 CMR 12.04(10).
  - The Residence shall document the results of these reviews.
  - Follow requirements of QI &A program.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Employee Orientation— 651 CMR 12.07(1)

- ❖ Total number of hours are unchanged for all employees except Personal Care Workers.
- ❖ Dementia/cognitive impairment still 2 hours.
- ❖ Only 2 of 7 hours may be unfacilitated
  - The facilitation requirements apply only to the orientation, not the annual in-services.
- ❖ Two new topics:
  - Residence's policies and procedures related to disaster and emergency preparedness (previously stated "safety and emergency measures")
  - Residence's policy on emergency response to acute health issues and first aid
- ❖ **The initial orientation is not transferable from employee's previous place of employment.**



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Employee Orientation (cont.)

Hours		Hours	
<b>Personal Care Workers Only</b>		<b>Other Employees*</b>	
Orientation – General Topics	5	Orientation – General Topics	5
Dementia Topics	2	Dementia Topics	2
Self-Administered Medication Management (SAMM)	1	<b>Total Hours</b>	<b>7</b>
<b>Total Hours</b>	<b>8</b>		

- Manager and Service Coordinators still need to complete an additional 2 hours on dementia/cognitive impairment topics above the 2 hours required of all employees.
- Additional requirements for SCR employees on next slide



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### SCR Employee Orientation— 651 CMR 12.07(2)

- ❖ An additional 7 hours on topics related to the specialized care needs of the Special Care population.
- ❖ If transfer to SCR, must complete an additional 7 hours of specialized training orientation prior to active employment in the SCR.
- ❖ If the date an employee started working in SCR is different from the date of employment at the Residence, the date of employment in the SCR must be clearly documented within the employee's file.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Special Care Employee Orientation (cont.)

Hours		Hours	
<b>SCR Personal Care Workers</b>		<b>Other SCR Employees</b>	
Orientation – General Topics	5	Orientation – General Topics	5
Dementia Topics	2	Dementia Topics	2
Special Care-Specific Topics	7	Special Care-Specific Topics	7
SAMM	1	<b>Total Hours</b>	<b>14</b>
<b>Total Hours</b>	<b>15</b>		



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Employee Annual Inservice Training— 651 CMR 12.07(3)

- ❖ 10 hours annual training requirement unchanged except for the following changes:
  - **Personal Care Workers**— additional 1 hour specific to SAMM;
  - **SCR staff**— additional 4 hours SCR-specific topics;
  - Dementia/cognitive impairments up from 1 to 2 hours.
  
- ❖ All employees must receive training on:
  - 2 hours on Dementia topics; and
  - Disaster and emergency preparedness plan.
  
- ❖ In addition, Personal Care Workers must also receive training on the ALR's policies on:
  - Emergency response to acute health issues; and
  - First aid.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Employee Annual Inservice Training (cont.)

- ❖ Training received within the past 18 months at another Assisted Living Residence may be used to satisfy annual inservice training requirements. Will need to see:
  - Training certificates; copies of sign-sheets; or
  - Letter from previous employer with dates, topics and length of training(s), and employee's name.
  
- ❖ List of acceptable inservice trainings topics:
  - Orientation topics at 12.07(1)(a) – (m)
  - SCR-related topics
  - List at 12.07(3)(b)(1) – (15)



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Employee Annual Inservice Training

	Hours		Hours
<b>Personal Care Workers Only</b>		<b>All Other Employees</b>	
Training – General Topics Must cover ALR’s policies on: <ul style="list-style-type: none"> <li>• emergency response to acute health issues;</li> <li>• first aid; and</li> <li>• disaster and emergency preparedness</li> </ul>	8	Training – General Topics Must cover: <ul style="list-style-type: none"> <li>• the disaster and emergency preparedness plan</li> </ul>	8
SAMM	1	Dementia Topics	2
Dementia Topics	2	<b>Total Hours</b>	<b>10</b>
<b>Total Hours</b>	<b>11</b>		

- Additional requirements for SCR employees on next slide.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Special Care Employee Annual Inservice Training

Hours		Hours	
Personal Care Workers Only		All Other Employees	
Training – General Topics Must cover ALR’s policies on: <ul style="list-style-type: none"> <li>• emergency response to acute health issues;</li> <li>• first aid; and</li> <li>• disaster and emergency preparedness</li> </ul>	8	Training – General Topics Must cover: <ul style="list-style-type: none"> <li>• the disaster and emergency preparedness plan</li> </ul>	8
SAMM	1	Dementia Topics	2
Dementia Topics	2	Special Care-Specific Topics	4
Special Care-Specific Topics	4	<b>Total Hours</b>	<b>14</b>
<b>Total Hours</b>	<b>15</b>		



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Employee Record– 651 CMR 12.05

2 new sections:

- ❖ Documentation of reports of criminal offender record information (CORI)
  - Documentation of completed CORIs
  - Do not include results of individual's CORI
- ❖ Copies of any internal disciplinary letters or reports.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program-- 651 CMR 12.04(10)

- ❖ The assisted living Residence must establish and maintain an effective and on-going quality improvement (QI) and assurance program (QA).
- ❖ The QI / QA program requires each Residence to review and assess the operations of :
  - The Service Planning;
  - Resident Safety Assurances; and
  - Medication Quality.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program (cont.)

- ❖ In addition, the Residences are required to:
  - Have a system in place to facilitate the detection of issues and problems; and
  - Utilize the data collected to identify and implement changes that will improve performance or reduce the risk of Resident harm.
- ❖ The results of the QI / QA program cannot be the sole basis for the determination of non-compliance.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program (cont.)

- ❖ In order to comply with the Service Planning requirement outlined in 651 CMR 12.04(10) (a) the following criteria must be met:
  - At a minimum, at least once per year, review a random sample of Resident assessments, service plans and progress notes for the purpose of ensuring their effectiveness.
  - The criteria for the selection of a “random sample” of Resident files shall include a minimum of 10% of the existing Resident files.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program (cont.)

- If the Assisted Living Residence has a SCR, it must include 10% of the SCR files in the annual review process.
  - The audited files should be unduplicated from previous audit reviews.
- ❖ A summary report of the findings should be prepared upon completion of the annual audit and within 30 days of the end of the period.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program (cont.)

- ❖ **The annual QI / QA audit of Service Planning must include at a minimum, the following information:**
  - The date the care planning review was conducted;
  - The name, move-in date and apartment number of each Resident included in the review;
  - The name and title of the person conducting the review; and
  - A summary of the findings and applicable follow-up plans for improvement.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program (cont.)

- ❖ In order to comply with the Residency Safety Assurance requirement, the following criteria must be met:
  - Documentation that an annual review was conducted of the Residence's policies and procedures designed to ensure a safe environment. Particular attention should be placed on policies concerning incidents which occurred and impacted Resident safety.
  - Where applicable, policy revision or recommendation for additional policy should be described.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program (cont.)

- ❖ In accordance with the Medication Quality Plan requirements, the following criteria must be met:
  - Semi-annual evaluation of each Personal Care worker that examines his or her awareness of SAMM regulations and applicable policies, and verifies his or her demonstrated ability to comply with SAMM regulations and related Residence policies and procedures; and
  - A quarterly audit of a random sample of the Residence medication documentation sheets required under 651 CMR 12.04(3)(b)(2) to ensure compliance with SAMM protocols and Residence policies.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Quality Improvement and Assurance Program (cont.)

- ❖ The frequency and scope of each quality assurance task should be in accordance with the overall purpose of a QI/QA program as described in the first paragraph of 12.04 (10).
- ❖ For all of the required elements of the QI/QA program, the minimum documentation must included:
  - The periods (i.e., start and end date) for each completed QI/QA activity should be clearly stated; and
  - The identities of the individuals (including their name and position) responsible for the quality assurance activity



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Communicable Disease Control Plan - 651 CMR 12.04(12)

- ❖ The Residence must implement a plan to prevent and limit the spread of communicable diseases.
- ❖ In order to effectively identify and manage communicable diseases within your Residence, your plan should include the following:
  - Methods of screening of prospective and current employees for communicable diseases;
  - Work restriction guidelines for an employee that is infected or ill with a communicable disease;



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Communicable Disease Control Plan (cont.)

- In the event that a Resident is suspected of having a communicable disease that would endanger the health and welfare of other Residents, appropriate safety measures to be taken on behalf of that Resident and the other Residents;
- Procedures to monitor and investigate causes of infection, manner of spread and what measures will be taken to prevent the spread of the infection within the Residence;
- Measures to limit the spread of communicable disease, including but not limited to procedures for hand washing and use of gloves, respiratory protection, linen handling, housekeeping and needle and hazardous waste disposal.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Disaster and Emergency Preparedness Plan— 651 CMR 12.04(11)

- ❖ Each Residence shall have a comprehensive emergency management plan to meet potential disasters and emergencies, including but not limited to: fire; flood; severe weather; loss of utilities, or water services; and Resident-specific crises, such as a missing resident.
- ❖ The plan shall be designed to reasonably ensure the continuity of operations of the Residence.
- ❖ In addition to the information outlined in the regulations as well as the requirements of the local Building, Fire and Health Departments, the following information is required for compliance.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Disaster and Emergency Preparedness Plan (cont.)

#### ❖ Required components of the Disaster & Emergency Preparedness Plan:

- A description of the Residence's chain of command including 24 hour contact information.
- Procedures to ensure necessary staffing levels of the Residence during an emergency.
- The frequency of drills or rehearsals which shall be held as required under state regulation and local requirements.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Disaster and Emergency Preparedness Plan (cont.)

#### ❖ Required components of the Disaster & Emergency Preparedness Plan (cont.)

- The procurement of essential supplies (food and water) confirmed with relevant vendors.
- The transportation arrangements for Residents should an evacuation of the Residence occur.
- Procedures to ensure all Residents are accounted for during an evacuation.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Disaster and Emergency Preparedness Plan (cont.)

- The transfer of critical Resident specific information, supplies and medication.
- Evidence of consultation with the local emergency management agency and where applicable, other emergency planning agencies.
- ❖ Note: Consider that Residences could function as a resource for the community in the event of a local/regional disaster



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Residency Agreement

The Agreement is generally subject to review in 4 instances

- ❖ As a part of the operating plan, in the Residence's application for original and renewal certification – 651 CMR 12.03((2)(f)(8)
- ❖ Among information to be kept current – 651 CMR 12.04(13)(b), incident to any alteration of an operating plan, “30 days prior”
- ❖ Among information maintained in the Resident’s record – 651 CMR 12.05(1)(h)
- ❖ **As a part of the timely disclosure required to be made to a prospective Resident, the person with whom the contract is executed, and if applicable the Legal Representative— 651 CMR 12.08**



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Residency Agreement-- 651 CMR 12.08(2) (cont.)

- ❖ There are thirteen (13) requirements for Residency Agreements. One has been significantly amended:
  6. Conditions under which the Agreement may be terminated..., including criteria used to determine that those conditions have been met and the length of prior notice required in such termination of the Residency Agreement. (see 651 CMR 12.08(2)(a)(6))
- ❖ *If the Residence elects to exclude provisions concerning grievance procedures and reasonable rules of conduct as permitted under section 12.08(3) governing the Disclosure of Rights and Services, then these provisions must be fully explained in the Residency Agreement.*



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Resident Rights & Required Disclosures– 651 CMR 12.08(3)

- ❖ The amended regulations add or significantly modify fourteen (14) provisions required to be incorporated within the Residence's Disclosure Statement:
  - See sections 12.08(3)a., b., and g. through r.
- ❖ Most importantly, the amended regulations emphasize a 3-step process of timely and full disclosure. See next slide.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Resident Rights & Required Disclosures (cont.)

Compliance: Resident record documentation must include a statement signed and dated by the Resident attesting to his/her timely receipt of Residence advice and Residence delivery and review of Elder Affairs' consumer guide, the Disclosure Statement and Residency Agreement.

#### 3-STEP PROCESS FOR TIMELY AND FULL DISCLOSURE

(1) **Prior to scheduling a formal meeting:**  
**advise** prospective Resident of his/her right to an advisor

(2) **Deliver and verbally review during its first formal meeting:**  
Elder Affairs consumer guide and the Residence's Disclosure Statement

(3) **Delivered and verbally review Residency Agreement before signing an agreement or exchanging money,**  
whichever first occurs



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Resident Rights & Required Disclosures (cont.)

- ❖ The Residence must disclose the Residency Agreement to several parties when it has information indicating:
  - The prospective Resident is represented by a Legal Representative, or an attorney-in-fact;
  - A court-appointed Legal Representative has been designated for a Resident; or
  - Another party will contract on behalf of the Resident
  
- ❖ Documents shall be written in plain language, printed no smaller than 14 point type.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Resident Rights & Required Disclosures (cont.)

This table summarizes important differences among Resident representatives:

<b>Designation</b>	<u><b>Resident Representative</b></u> (e.g., family relation, friend, financial planner)	<u><b>Legal Representative</b></u> (i.e., Activated Health Care Proxy, Guardian, Conservator, Agent with documented Powers of Attorney)
<b>Authority and Instrument</b>	Resident may or may not appoint Representative and Representative accepts...	Resident executes HCP and MD certifies; by written POA or judicial order executed by/on behalf of...
<b>Scope of Authority</b>	Generally 651 CMR 12.02: <b>Spouse is qualified rep*</b>	Examine the written instrument: <b>May be a signatory and more</b>
<b>Application</b>	651 CMR 12.02*; 12.04(7)(assessment), 12.04(8)(service plans), and 12.08 (residency agreements & disclosures)	Examine the instrument: application may extend beyond ALR services, payments and other concerns



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Compliance Review– 651 CMR 12.09

The amended regulations affect the frequency, scope and effect of compliance reviews and findings

- ❖ Continues biennial compliance review process – 651 CMR 12.03(7)
- ❖ Adds review *“at any time but no less than once every two years”*

*Authorizes Elder Affairs access to the Residence's staff & contracted provider records including personnel files, all other books...related to operation of the Residence*

**IMPORTANT:** *Refusal to grant Elder Affairs timely access is valid basis for suspending, revoking or denying the Residence's Certification.*



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Compliance Review (cont.)

- ❖ The amended regulations define *new* potential corrective actions that Elder Affairs can require of the Residence due to non-compliance:
  - *Cease new enrollments, reduce enrollment;*
  - *Change staffing patterns and/or staff qualifications or require additional staff or training; and/or*
  - *Take emergency action (see below).*
  
- ❖ *Elder Affairs may consider certain factors in determining the Residence's corrective actions:*
  - *Prior instance of non-compliance;*
  - *The nature of non-compliance, its scope, severity and frequency;*
  - *The risk posed to Residents' health safety & welfare, and any failure to correct the non-compliance*
  - *Ongoing patterns of non-compliance; and*
  - *The results of past corrective actions implemented.*



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Compliance Review (cont.)

- ❖ Elder Affairs may further sanction non-compliance by:
  - Modifying the ALR's Certificate;
  - Suspending the ALR's Certificate;
  - Revoking the ALR's Certificate; or
  - Refusing to certify an ALR.
  
- ❖ *Factors that can lead to Elder Affairs imposing such sanctions include:*
  - ALR's failure to comply with a law, regulation, corrective action, sanction or suspension agreement;
  - ALR's submission of a false/misleading report under 12.00 et seq.;
  - *ALR's refusal to submit required report or make available records;*
  - *ALR's refusal to admit Elder Affairs' representative at reasonable time to inspect; or*
  - *ALR's failure to obtain certificate prior to commencing or changing location of program or Residence, except as allowed by regulation.*



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Compliance Review (cont.)

#### EMERGENCY ACTION – 651 CMR 12.09(2)(e)

- ❖ Elder Affairs may modify, revoke, suspend or refuse to renew a certificate without prior notice:

Whenever Residence is not in compliance with Act or regulation  
AND

Such noncompliance presents an immediate threat  
to Resident health, safety and welfare

- ❖ Residence shall then be notified in writing (see also, Response, below)
- ❖ Emergency sanctions remain in effect during Admin. Review and Hearing
- ❖ *The nature of findings may require corrective action within a reasonable timeframe before taking an action to modify, revoke, suspend or refuse certification – 651 CMR 12.09(2)(f)*



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Compliance Review (cont.)

Response to Notice of Non-Compliance – 651 CMR 12.09(2)(g) & (h)

**Step 1:** ALR must indicate agreement or disagreement within 10 days of receipt of notice

**Step 2:** If in agreement, then submit Plan of Correction to Elder Affairs within reasonable time frame, including a plan to prevent recurrence, designate an individual to monitor the plan, and set a date of lasting correction.

**Step 3:** If ALR disagrees with the findings, then within 10 days it shall submit its request for administrative review, enclosing its written rebuttal to findings

Administrative Review – Agency Review and Formal Hearing

**Step 1:** Consultation at exit interview – 651 CMR 12.10(1)(a)

**Step 2:** Informal Review by Director of the ALR Certification – 651 CMR 12.10(1)(b)

**Step 3:** Informal Hearing (IH) before the Assistant Secretary – 651 CMR 12.10(1)(c)

**Step 4:** Formal Hearing-- Residence may appeal to Division of Administrative Law Appeals (DALA) within 21 days after IH decision rendered by Assistant Secretary

**Step 5:** Elder Affairs may approve, modify or disapprove a decision rendered by DALA

**Step 6:** The ALR may seek judicial review of Elder Affairs Step 5 decision

**Important:** Elder Affairs may enforce the disputed decision during Administrative Review at DALA.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Reporting to Elder Affairs– 651 CMR 12.04(13)

The amended regulations require annual reporting (i.e., financial disclosures aggregate data reporting) and incident reporting – 651 CMR 12.04(13)(a)(1), (2) & (3)

#### Annual Reporting

ALR financial disclosures must be:

- ❖ Filed within 90 days of the close of the Residence's fiscal year
- ❖ Based on the financial statement reviewed/audited by a CPA
- ❖ Sufficient for Elder Affairs to assess Residence's fiscal condition and its' ability to meet service plans

*(NEW) ALR must submit annual aggregate data reports:*

- ❖ *Submitted no later than March 1<sup>st</sup> following each "reporting period" (def: Jan.-Dec.)*
- ❖ *On a form approved by Elder Affairs*
- ❖ *Based on most recent Resident assessments and service plans.*



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Reporting to Elder Affairs (cont.)

#### Incident Reporting

- ❖ Some reporting is not new (See 651 CMR 12.04(13)(b)(1)&(2))
  1. “Reporting 30-days prior to” – Alterations of the operating plan
  2. Reporting violations of State Sanitary Code, State Building Code, fire safety regulations, and other regulations affecting Resident health, safety or welfare
  
- ❖ **(NEW) Incident-Specific reporting under 12.04(11)(c) and (d)**
  1. Emergency situations (see following slide for details)
  2. Reporting Resident-specific emergencies (see following slide)

**Important:** Incident-specific reporting is ***in addition to*** reporting required under MGL c.19 D, s. 15 (Assisted Living Ombudsmen) and other applicable laws.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Reporting to Elder Affairs (cont.)

Contact Elder Affairs' Certification Unit upon occurrence of an event, by telephone at 617-727-7750 **AND** write via fax at 617-727-9368, or e-mail.

#### ❖ Emergencies that displace Residents 24 hours or more. Immediately report:

1. Residence, date, time & nature of event (e.g., natural disaster, HVAC, fire); and
2. Number of Units & Residents displaced; remedial action taken; anticipated duration of displacement; and other parties contacted.

#### ❖ Resident-Specific Emergencies that have a “significant negative effect” on a Resident’s health, safety or welfare. Report and fax/e-mail within 24 hours:

1. Date, time and nature of the harm and remedial action taken (e.g., a medication error requiring medical attention; accident or incident requiring unscheduled hospital or medical treatment; unanticipated death; suicide or attempt; elopement with an absence 30 minutes or more);
2. Resident’s current status (DO NOT SUBMIT RESIDENT NAME AT THIS TIME); and
3. List other parties or agencies contacted.



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

### Document Submission Process

#### What:

- ❖ Revised Service Plan form
- ❖ Revised Assessment form
- ❖ Revised Disclosure of Rights & Service
- ❖ Revised Residency Agreement
- ❖ New Sections of Operating Plan
  - QA & I policies
  - Disaster & Emergency Preparedness policies
  - Communicable Disease Prevention policy
  - Policies & procedures to provide safe environment for all Residents
- ❖ If applicable, SCR Operating Plan

When: by December 10, 2006

How: Certified, return receipt mail or similar (delivery confirmation)

#### What then:

- ❖ If not complete, will get notice regarding missing components
- ❖ Begin to use forms submitted by the December 10th deadline until hear otherwise from Elder Affairs.

# EOEA's web page: [www.mass.gov/elder](http://www.mass.gov/elder)

**Elder Affairs - Microsoft Internet Explorer**

Address: <http://www.mass.gov/?pageID=eldershomepage&L=1&sid=Elders&LO=Home>

**1-800-AGE-INF**  
EXPLORE WHAT'S POSSIBLE

**Key Resources**

- [Programs and Services](#)  
1-617-727-7750
- [1-800-Age-Info](#)  
1-800-243-4636 or TDD/TTY 1-800-872-0166
- Elder Abuse Hotline**  
1-800-922-2275 (V/TDD)
- [Protective Services](#)
- [Emergency Response](#)
- [Prescription Advantage](#)  
1-800-243-4636 or 1-877-610-0241 (TTY)
- [Executive Office of Elder Affairs](#)  
1-617-727-7750
- [The Attorney General's Elder Hotline](#)
- [Area Agency on Aging](#)
- [Aging Services Access Points](#)

**Search for documents in the 800AgeInfo Library**

- [Search Long Term Care Options](#)
- [Find Walking Clubs in Your Neighborhood](#)
- [More...](#)

**Find Community Resources**

- [Nursing Home Consumer Info](#)
- [Resources for End of Life Care](#)

**MA Medicare Part D Resource Center**

**News & Updates**

- [Final Assisted Living Regulations Filed August 23, 2006](#)
- [Prescription Advantage to Hold Open Enrollment](#)
- [Romney Expands Care Options For Seniors, Disabled](#)
- [Tips To Keep Elders Safe In Hot Humid Weather](#)
- [Take a Step in the Right Direction with The Keep Moving Program](#)
- [Disaster Recovery Center changes](#)
- [More...](#)

**Related Links**

- [Prescription Advantage](#)
- [Area Agency on Aging](#)
- [Federal Government Benefits](#)
- [Councils on Aging](#)

**Housing**  
[Assisted Living, Supportive Housing, Congregate Housing, Providers, more...](#)

**Home Care**  
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**Caregiver Support**  
[Program overview, National aging resources, General resources, Preventing Illness, more...](#)

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**Meals and Nutrition**  
[Overview, Services, Qualifications, Meal sites, more...](#)

**Service Organizations and Advocates**  
[AAA, Assisted Living, Long Term Care, Councils on Aging, more...](#)

**Employment, Training and Education**  
[Community Service Jobs, SCSEP Offices, Poster, more...](#)

Get applications & Guidelines by clicking "Providers"

Get Regulations here



# Amended Assisted Living Regulations

## Executive Office of Elder Affairs

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- Steven Sauter 617-222-7502  
steve.sauter@state.ma.us

**Additional questions and answers**

**THE MASSACHUSETTS EXECUTIVE  
OFFICE OF ELDER AFFAIRS**



**Jennifer Davis Carey, Secretary**

**October 2006**