651 CMR 12.00: CERTIFICATION PROCEDURES AND STANDARDS FOR ASSISTED LIVING RESIDENCES

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12.01: Scope and Purpose

(1) 651 CMR 12.00 sets forth the requirements for Certification, renewal of Certification and suitability for Applicants and Sponsors of Assisted Living Residences. The purpose of 651 CMR 12.00 is to promote the availability of services for older adults or persons with disabilities in a residential environment; to promote dignity, individuality, and privacy to support and preserve decision-making ability of such persons and to promote their health, safety, and welfare; to promote the ability of Assisted Living Residents to age in place; and to promote continued improvement of Assisted Living Residences. The Executive Office of Aging & Independence (EOAI) may clarify the substantive provisions of 651 CMR 12.00 by written guidance, instructions, bulletins, or other written issuance.

(2) Although the provisions of M.G.L. c. 19D and 651 CMR 12.00 do not apply to the following entities and premises for the original facilities and services for which said entities and premises were originally licensed or organized to provide, if any such entity seeks to have all or part of its premises advertised, operated or maintained as an Assisted Living Residence, it must apply to become Certified in accordance with 651 CMR 12.03:

(a) Convalescent homes, licensed nursing homes, licensed rest homes, charitable homes for the aged or intermediate care facilities for persons with an intellectual disability licensed pursuant to M.G.L. c. 111, § 71;

(b) Hospices licensed pursuant to the provisions of M.G.L. c. 111, § 57D;

(c) Facilities providing continuing care to residents, as those terms are defined by M.G.L. c. 93, § 76;

(d) Congregate housing authorized by M.G.L. c. 121B, § 39;

(e) Group homes or supported living programs operating under contract with the Department of Mental Health, MassAbility, or the Department of Developmental Services;

(f) Housing operated for only those duly ordained priests or for the members of the religious orders of the Roman Catholic Church in their own locations, buildings, Assisted Living Residences or headquarters to provide care, shelter, treatment and medical assistance for any of the said duly ordained priests or members of the said religious order.

(3) The provisions of M.G.L. c. 19D are not applicable to any residential premises available for lease by elderly or disabled individuals that is financed or subsidized in whole or in part by local, state, or federal housing programs established primarily to develop or operate housing rather than to provide housing and personal services in combination.

12.02: Definitions

When used in 651 CMR 12.00, unless the context otherwise requires, the following terms shall have the following meanings:

Abuse. Consistent with the Elder Protective Services regulations, 651 CMR 5.00: *Elder Abuse Reporting and Protective Services Program*, an act or omission, including but not limited to emotional abuse, financial exploitation, neglect, physical abuse, sexual abuse, and/or self-neglect.

Activities of Daily Living (ADL). Tasks related to bathing, dressing, grooming, ambulation, eating, toileting and other similar tasks related to personal care needs.

Administrative Fee. Any charge billed to and payable by a Resident as a condition of admission, excluding room, board, and services.

Alteration. Any of the following changes made after the date of the Residence's last Certification:

(a) a change in the number of Units;
(b) a substantial change in the configuration of Units;
(c) a substantial change in the premises;
(d) a substantial change in the operating plan;
(e) a new management company; and
(f) a name change of the Residence or the Residence's Sponsor.

Applicant. A person or legal entity applying to EOAI for Certification as a Sponsor of an Assisted Living Residence.

Assisted Living Residence or Residence. Any entity, however organized, whether conducted for profit or not for profit, which meets all of the following criteria:

(a) provides room and board;
(b) provides, directly by its employees or through arrangements with another organization which the entity may or may not control or own, Personal Care Services for three or more adults who are not related by consanguinity or affinity to their care provider; and
(a) collects payments or third-party reimbursements from or on behalf of Residents to pay for the provision of assistance with the Activities of Daily Living, or arranges for the same.

Basic Health Services. Certain services provided at an Assisted Living Residence certified to provide such services by employees of the Residence that are qualified to administer such services or a qualified third-party in accordance with a Medical Order issued by an Licensed Independent Provider; provided, however, that such services shall include all of the following:

(i) injections;
(ii) the application or replacement of simple non-sterile dressings;
(iii) the management of oxygen on a regular and continuing basis;
(iv) specimen collection and the completion of a home diagnostic test, including, but not limited to, COVID-19 testing, influenza testing, warfarin, prothrombin or international normalized ratio testing, and glucose testing; provided, that such home diagnostic test or monitoring is approved by the United States Food and Drug Administration for home use; and
(v) application of ointments or drops.

Bathing Facility. A room equipped with a showerhead or a bathtub to enable one person to take a shower or a bath.

Certification. EOAI's initial approval, or subsequent renewal of that approval, of the qualifications of an Applicant or Sponsor to operate and maintain an Assisted Living Residence subject to the requirements of M.G.L. c. 19D and 651 CMR 12.00.

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Certified Provider of Ancillary Health Services. A person or legal entity certified to provide home health care services or hospice care services under Title XVIII of the Social Security Act 49, Stat. 620 (1935) or an entity licensed under M.G.L. c. 111 that provides physician services, pharmacy services, restorative therapies, podiatry, hospice services, and/or home health aide services.

Clinical Professional. A licensed health care provider who provides health services, including Basic Health Services, within their scope of practice to Residents of an Assisted Living Residence.

Computation of Time. In computing any period of time under 651 CMR 12.00, the day of the act which initiates the running of the time period shall not be counted. The last day of the time period shall be included, unless it is a Saturday, Sunday or legal holiday or any other day on which EOAI is closed, in which case the period shall run until the end of the next business day. When the time period is less than seven days, any days when EOAI is closed shall be excluded from the computation.

Controlled Substances. For the purposes of 651 CMR 12.00, controlled substances shall include all Class II controlled substances identified by 21 U.S.C. c. 13, and any Class I controlled substances identified by 21 U.S.C. c. 13, that may be legally prescribed according to the laws of the Commonwealth.

EOAI. The Executive Office of Aging & Independence, formerly known as the Executive Office of Elder Affairs, a department within the Executive Office of Health and Human Services established pursuant to M.G.L. c. 6A, § 16.

EOHHS. The Executive Office of Health and Human Services established pursuant to M.G.L. c. 6A, § 2.

EOHHS Agency. Any department, agency, commission, office, board, division, or other body within and subject to EOHHS under M.G.L. c. 6A, § 16, including EOAI.

Evidence Informed Falls Prevention Program. The use of the best available knowledge and research to guide the design and implementation of a program to assess Resident risk for falls and establish preventive measures and situational procedures.

Floater. A staff member of the Residence who is available on an ad hoc basis to assist in times of unusually heavy workload or emergency situations and is not specifically assigned to a group of Residents or unit.

Health Care Agent. An adult to whom authority to make health care decisions is delegated under a Health Care Proxy.

Health Care Proxy. A document delegating to an agent the authority to make health care decisions, executed in accordance with the requirements of M.G.L. c. 201D.

Instrumental Activities of Daily Living (IADL). Tasks related to meal preparation, housekeeping, clothes laundering, shopping for food and other items, telephoning, use of transportation, and other similar tasks related to environmental needs.

Legal Representative. Guardian, Conservator, or attorney in-fact under a Power of Attorney, as appropriate. No entity or individual can be a legal representative unless they meet all requirements under applicable state law.

Licensed Independent Provider. Licensed Independent Provider shall have the same meaning as the term "authorized medical professional" as defined in M.G.L. c. 19D, § 1.

Lift Device. A device designed to assist in transferring a Resident between positions or locations, including, but not limited to, ceiling-based lifts, floor-based lifts, and sit-to-stand lifts.

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Limited Medication Administration (LMA). The administration of medication to a Resident which is not otherwise prohibited by M.G.L. c. 19D or 651 CMR 12.00. LMA may only be provided in a Residence by a practitioner as defined in M.G.L. c. 94C, or a nurse licensed under the provisions of M.G.L. c. 112, § 74 or § 74A to the extent allowed by laws, regulations and standards governing nursing practice in Massachusetts, but which may not include a nurse delegate under M.G.L. c. 112, § 80B. This definition is not intended to address or prohibit the administration of medication conducted by a family member, an individual designated in writing by the Resident, or the Resident's Legal Representative, the conducting of which is not governed by 651 CMR 12.00.

Lodging. The provision of a single or a double living Unit.

Manager. The individual who has general administrative charge of an Assisted Living Residence. A Manager may also be known as an Executive Director.

Medical Order. A care order as defined in St. 2024, c. 197, § 2 as a written order for Basic Health Services issued by an authorized medical professional.

Medication Diversion. The transfer of any legally prescribed medication from the individual for whom it was prescribed to another person for any illicit use.

Medication Error. A failure to administer a medication as prescribed, including the failure to administer the correct medication or the failure to administer the medication:

(1) Within appropriate time frames;
(2) In the correct dosage;
(3) In accordance with accepted practice;
(4) To the correct participant; or
(5) In the correct route.

Mobility Assistive Device. Any portable or fixed mechanical, electronic, or manual device (*e.g.*, a cane, walker, wheelchair, *etc*.) specifically designed, approved, and maintained for the purpose of facilitating the safe movement or ambulation of a Resident with limited mobility. The Mobility Assistive Device must conform to applicable national and local safety and quality standards.

Modification of Certification. A change to or limitation on the scope of a Sponsor's authority to operate an Assisted Living Residence.

Mutual Aid. A coordinated and collaborative effort between local Assisted Living Residences to provide support and assist with the management of evacuations and resource/asset needs, including the identification of substitute housing for use during an extended evacuation of Residents.

Newly Constructed. A building or buildings for which a person or entity received a building permit on or after June 1, 1995 and seeks Certification as an Assisted Living Residence; provided that a building or buildings for which a person or entity at any time is or was providing facilities or services other than those of an Assisted Living Residence shall not be considered newly constructed for the purpose of the physical requirements for an Assisted Living Residence under M.G.L. c. 19D, § 16 or 651 CMR 12.04(1).

Personal Care Service. Assistance with one or more of the Activities of Daily Living and Self-administered Medication Management, either through physical support or supervision. Supervision includes reminding or observing Residents while they perform activities.

Personal Care Staff. Any individual who provides Personal Care Services to a Resident.

Residency Agreement. The written contract between an Assisted Living Residence and a Resident or prospective Resident on either a temporary (*e.g.*, for respite care) or more permanent basis.

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Resident. An individual who resides in an Assisted Living Residence and who receives housing and Resident Services and, when the context requires or permits, such individual's Legal Representative. An individual who resides in an Assisted Living Residence or Special Care Residence for any period of time shall be entitled to all the rights and privileges accorded under 651 CMR 12.00 regardless of the anticipated length of the residency.

Resident Care Director. The individual(s) responsible for ensuring and overseeing the process for coordination of Resident Services, including the preparation and periodic review and revision of each Resident's Service Plan. A Resident Care Director may also be known as a Service Coordinator.

Resident Representative. An individual who is authorized by the Resident to help them fully participate in planning services or paying fees. The Resident Representative shall not be employed by the Residence, nor affiliated with the Sponsor unless related to the Resident by kinship or marriage. The Resident Representative shall not act on behalf of a Resident in circumstances warranting a Legal Representative. The Residence shall not treat the Resident Representative as personally liable for payment of Resident fees without having first obtained the Resident Representative's written agreement to act as a guarantor or surety.

Resident Services. Services to assist Residents with Activities of Daily Living (ADL), Instrumental Activities of Daily Living (IADL), Self-administered Medication Management (SAMM), or other similar services, but does not include optional services such as concierge services, recreational or leisure services. Resident Services are provided either through physical assistance or staff supervision.

Restraint. For the purposes of 651 CMR 12.00, any action taken by the Assisted Living Residence for the purpose or punishing or penalizing a Resident, or to control or manage a Resident's behavior with lesser effort by the Assisted Living Residence that is not in the Resident's best interest by means of:

(a) manual method or physical or mechanical device, material, or equipment attached or adjacent to the Resident's body that the individual cannot remove easily which restricts the Resident's freedom of movement or normal access to their body; or

(b) any drug not required to treat medical symptoms and not requested by the Resident.

Secretary. The Secretary of the Executive Office of Aging & Independence of the Commonwealth of Massachusetts.

Self-administered Medication Management (SAMM). A process which includes reminding Residents to take medication, opening containers for Residents, opening prepackaged medication for Residents, reading the medication label to Residents, and observing Residents while they take the medication.

Serious Incident. Any sudden or progressive development or event that requires immediate attention and decisive action to prevent or minimize any negative impact on the health, safety, or welfare of one or more Residents.

Service Plan. The individualized plan for each Resident developed and implemented in accordance with 651 CMR 12.04(8) and 12.04(9).

Skilled Nursing Care. Skilled services described in 130 CMR 456.409: *Clinical Eligibility Criteria* or any successor regulation.

Special Care Residence (SCR). The Residence in its entirety or any separate and distinct section or sections within the Residence that provide(s) an enhanced level of supports and services for one or more Residents to address their specialized needs due to cognitive or other impairments.

Special Care Unit. A portion of a Special Care Residence designed for and occupied pursuant to a Residency Agreement by one or two individuals as the private living quarters of such individuals.

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Sponsor. The person or legal entity named in the Certification of an Assisted Living Residence. A Sponsor may be the owner of the Assisted Living Residence.

Transfer Assistive Device. Any portable or fixed mechanical, electronic, or manual device (*e.g.*, a Lift Device, a bed rail that is less than half the length of the bed, *etc*.) specifically designed, approved, and maintained for the purpose of transferring a Resident with limited mobility. The Transfer Assistive Device must conform to applicable national and local safety and quality standards.

Transfer of Ownership. Transfer of a majority interest in the ownership of an Assisted Living Residence. In the case of an individual, transfer of ownership; in the case of a corporation, transfer of a majority of the stock thereof; in the case of a partnership, transfer of a majority of the partnership interest; in the case of a trust, change of the trustee, or majority of trustees shall constitute transfer of ownership. A transfer of ownership shall also be deemed to have occurred where foreclosure proceedings have been instituted and consummated by a mortgagee in possession of the premises, or when bankruptcy proceedings have been initiated.

Unanticipated Death. The death of a Resident resulting from any cause not directly related to an existing diagnosis or prognosis.

Unit. A portion of an Assisted Living Residence designed for and occupied pursuant to a Residency Agreement by one or two individuals as the private living quarters of such individuals.

12.03: Certification Process

(1) Requirements and Limitations.

(a) No person or legal entity shall advertise, operate, or maintain an Assisted Living Residence until it has been certified by EOAI.

(b) No person or legal entity shall advertise, market, or provide Basic Health Services until it has been certified by EOAI to provide such services.

(c) Notwithstanding the requirement of 651 CMR 12.03(1)(a), prior to the commencement of operations, an Applicant may advertise an uncertified Assisted Living Residence only if it first initiates the application process for Certification by notification to EOAI, and if it clearly states in all advertising and marketing materials that it has not completed the EOAI Certification process.

(d) An Applicant must have sufficient property rights, as an owner or lessee, as the Secretary or a designee finds necessary for the operation of an Assisted Living Residence.

(e) An Application for Certification shall not be approved until the Applicant and premises meet the requirements of 651 CMR 12.03(2).

(2) Application for Certification. Application for initial Certification or renewal of such Certification shall be made on forms and in the manner prescribed by EOAI. Every Application shall be notarized and signed under the pains and penalties of perjury by the Applicant. Except as set forth in 651 CMR 12.03(10), an Application for initial Certification shall be submitted to EOAI at least 90 days prior to the date the Applicant plans to commence operation of the Assisted Living Residence. EOAI shall charge a non-refundable fee set by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B for the filing of the Application for Certification of an Assisted Living Residence. An Applicant shall file a separate Application for each Assisted Living Residence for which Certification is sought. In support of the Application for Certification, each Applicant shall provide:

(a) The name and address of each officer, director, and trustee; and the names and addresses of each owner, general partner, limited partner, or shareholder with a 5% or greater interest in the Assisted Living Residence. For each such individual or entity identified in 651 CMR 12.03(2), the Applicant shall provide to EOAI documentation of the history of each such individual or entity, including, but not limited to:

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1. all multifamily housing, Assisted Living or health care facilities in which the individual or entity has been or is an officer, director, trustee, or partner and, if applicable, evidence from the relevant regulatory authority that said individual or entity's multifamily housing, Assisted Living, or health care facility has met criteria for licensure or Certification and, if applicable, have corrected all cited deficiencies without de-licensure or de-certification being imposed;

2. documentation of any enforcement action against the individual or entity and, if applicable, evidence that the individual or entity has corrected all cited deficiencies without revocation of licensure or certification;

3. whether such individual or entity has been convicted of Medicare or Medicaid fraud;

4. whether such individual or entity has any judgments or settled any Medicare or Medicaid false claims cases;

5. whether such individual or entity has been terminated from a Medicare program or Medicaid program for any reason; and

6. any other information or documentation requested by EOAI.

(b) A copy of the conversion approval from the DPH, if an Applicant seeks to convert all or part of a premises licensed as a Long-Term Care Facility to an Assisted Living Residence or if an Applicant seeks to add Assisted Living Residences to existing premises licensed as a Long-Term Care Facility;

(c) An operating plan which shall include, at a minimum, the following information:

1. The number of single and double occupancy Units for which Certification is sought, the number of single and double occupancy Units designated as Special Care Units, and the number of Residents per Unit; The location of Units and Special Care Units, common spaces, and egresses by floor;

2. The fee structure for lodging, meals and services, and any optional services, including Basic Health Services;

3. The type, extent, daily availability, and cost of services to be offered, including optional services, such as Basic Health Services, in a format that allows Residents to understand their anticipated weekly or monthly costs; the arrangements for providing such services, including third-party contracts, and linkages with hospital and nursing facilities;

4. A Plan for Self-Administered Medication Management (SAMM) for Residents, including, but not limited to, assistance with as-necessary medication (PRN) when part of the SAMM, and, if offered, Limited Medication Administration;

5. A means for Residents to communicate urgent or emergency needs, and a plan to provide timely assistance to them;

6. Policies and procedures for the maintenance and operation of an automated external defibrillator (AED);

7. The number of staff to be employed in the operation of the Assisted Living Residence and their minimum qualifications and responsibilities;

8. A copy of the Residency Agreement and any disclosures that will be used by the Assisted Living Residence. The Residency Agreement must clearly describe the rights and responsibilities of the Resident and Sponsor, and comply with all requirements of M.G.L. c. 19D and 651 CMR 12.00;

9. A copy of all required current building, fire safety, and locally approved state sanitary code certificates and permits;

10. Procedures to notify a Resident and their Legal or Resident Representative, as appropriate, that the Assisted Living Residence is no longer an appropriate environment for the Resident. Such notice shall describe the changes in the Resident's service needs that justify such a finding, explain when those changes occurred, and describe how the Resident's needs can no longer be satisfied;

11. Procedures to ensure the advance and timely notification, of at least 60 calendar days, to a Resident and their Legal or Resident Representative, as appropriate, of any new fees or changes to existing fees, unless the Resident is assessed as needing additional services to ensure their health and safety more immediately. The Residence must establish and maintain written policies and procedures for how it handles urgent service needs and communicates fee changes, if any, with the Resident and their Legal or Resident Representative, as appropriate;

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12. A copy of all policies and procedures related to the design and operation of a Special Care Residence or Residences required under 651 CMR 12.04(5);
13. A copy of the quality improvement and assurance program required under 651 CMR 12.04(11);
14. A copy of the disaster and emergency preparedness plan required under 651 CMR 12.04(12);
15. A copy of the communicable disease control plan required under 651 CMR 12.04(13);
16. A copy of the Controlled Substances policies and procedures required by 651 CMR 12.04(15);
17. A statement citing the beginning and ending dates of the Residence's fiscal year;
18. Policies and procedures designed to ensure a safe environment for all Residents;
19. If the Residence accepts Residents who require the use a Lift Device, the policies and procedures regarding the training of Clinical Professionals and Personal Care Staff about all aspects of a program for safe and appropriate operation of any Lift Device used for lifting a Resident assessed to require such assistance to ensure the safe transfer of Residents;
20. Policies and procedures regarding which staff are trained and certified in cardiopulmonary resuscitation (CPR), and the use of an automated external defibrillator (AED);
21. Policies and procedures for when cardiopulmonary resuscitation (CPR) will be performed on a Resident and when an automated external defibrillator will be used on a Resident;
22. Policies and procedures regarding the storage and usage of naloxone and epinephrine;
23. Policies and procedures regarding the proper use, administration, and maintenance of oxygen, including safety protocols;
24. Policies and procedures regarding smoking on the Residence's premises and in the Residents' Units;
25. Emergency response procedures for all Residents; and
26. Other information EOAI deems necessary.

(d) Applications for Certification renewal must also include a statement that the data required by 651 CMR 12.04(14), information documenting all substantial changes to the operating plan prior to the effective date, and all other information required by EOAI, have been submitted.

(3) Application for Certification of Basic Health Services.

(a) Any Residence may apply to EOAI for Certification to provide Basic Health Services. No Residence shall offer or provide Basic Health Services without first being certified by EOAI to provide Basic Health Services.

(b) An Application to provide Basic Health Services shall be made on forms and in the manner prescribed by EOAI.

(c) An Application to be certified to provide Basic Health Services shall be submitted to EOAI at least 90 days prior to the date the Applicant plans to commence the provision of Basic Health Services.

(d) In support of the Application for Certification, each Applicant shall provide a detailed operating plan for the provision of Basic Health Services that includes, at a minimum:

1. a proposed administrative and operational structure to ensure the safe and effective provision of Basic Health Services and meet the needs of its Residents; and
2. a compliance plan to meet the requirements established under M.G.L. c. 19D and 651 CMR 12.00, which shall include, but not be limited to:
   a. staff qualifications, and initial and ongoing training and competencies;
   b. effective policies and procedures to ensure the availability of adequate supplies necessary for the provision of Basic Health Services and the safe administration and secure storage of medications;
   c. a process to determine whether the location where Basic Health Services will be provided is medically appropriate and to identify the space, equipment, and supplies necessary to provide such services in an effective and private manner;

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d. an organizational chart that details the roles and responsibilities of staff providing Basic Health Services, including designating the management or clinical lead charged with the creation, ongoing review and approval of all policies and procedures for each component of Basic Health Services;

e. policies and procedures for the provision of each component of Basic Health Services provided by the Residence;

f. standards for Resident assessment and evaluation to determine whether it is appropriate for the Residence to initiate or continue the provision of Basic Health Services to a Resident;

g. policies and procedures regarding the routine communication with the Resident's Licensed Independent Provider;

h. emergency response procedures for Residents receiving Basic Health Services;

i. procedures to ensure continuity of care for Residents receiving Basic Health Services who move-in or move-out of the Residence; and

j. the role, membership, and authority of an internal quality assurance and performance improvement committee. The internal quality assurance and performance improvement committee must develop and implement key quality indicators and implement key quality indicators as described or defined by EOAI.

(4) Review of Applications. The EOAI shall not review an Application for Certification unless:

(a) The Application includes all information required by EOAI;

(b) The Application includes all required attachments and statements that are required for the Certification; and

(c) The Applicant has paid all required Application fees and any outstanding fines issued in accordance with M.G.L. c. 19D and 651 CMR 12.00.

(5) Evaluation of Application. The EOAI shall not approve an Application for Certification unless:

(a) The Secretary or a designee has conducted a compliance review of the Assisted Living Residence as set forth in 651 CMR 12.09 and has reasonably determined that the premises meets the requirements of M.G.L. c. 19D and is in compliance with 651 CMR 12.00; and

(b) The Secretary or a designee has conducted a review of the Applicant and has reasonably determined that the Applicant meets the requirements of M.G.L. c. 19D and is in compliance with 651 CMR 12.00.

(c) EOAI may, in its discretion, deny Certification to any Applicant who had an ownership interest in an entity licensed under M.G.L. c. 111, a licensed medical provider, or a home health agency certified under Title XVIII of the Social Security Act, as amended, that:

1. has been the subject to a patient care receivership action;
2. has ceased to operate such an entity as a result of, or has otherwise been subject to:
   a. suspension or revocation of license or certification;
   b. receivership; or
   c. a settlement agreement arising from suspension or revocation of a license or certification;
3. has a settlement agreement in *lieu* of or as a result of receivership;
4. has been the subject of a delicensure action or involuntary termination of participation in either the Medical Assistance program or the Medicare program;
5. has been the subject of a substantiated case of patient abuse or neglect involving material failure to provide adequate protection or services for a Resident in order to prevent such abuse or neglect; or
6. has over the course of its operation been cited for repeated, serious or willful violations of rules and regulations governing the operation of said entity that indicate a disregard for resident safety and an inability to responsibly operate an Assisted Living Residence.

(6) Certification.

(a) After reviewing and evaluating an Application for Certification or renewal of Certification, if EOAI determines that all required regulatory requirements are met, EOAI will issue a Certification.

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(b) The Certification shall indicate whether the Residence is certified to provide Basic Health Services.
(c) Each Certification shall be for a term of two years and include a date of expiration.
(d) Each Certification shall be valid only in the possession of the Residence and the Sponsor to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary.
(e) No Certification shall be valid for any building premises other than those for which the Certification was originally issued.
(f) Every Assisted Living Residence Certificate must be displayed in a conspicuous place in the Residence and on the Residence's website.
(g) The Certification of a Sponsor to operate an Assisted Living Residence shall be returned by registered mail to EOAI immediately upon:
1. Revocation of or refusal to renew the Certification;
2. Transfer of ownership;
3. Change of the Sponsor's or Residence's name; or
4. Closure or other termination of the Residence's operations.

(7) Certification of Basic Health Services.
(a) EOAI will review the submitted Application for Basic Health Services Certification and conduct a compliance review of the Residence as set forth in 651 CMR 12.09.
(b) Upon making a determination that the Residence is in compliance with the requirements of M.G.L. c. 19D and 651 CMR 12.00, the Residence shall be approved by EOAI to provide Basic Health Services and a Certification will be issued.
(c) A Residence certified to provide Basic Health Services shall pay a fee to EOAI in accordance with 651 CMR 12.03(8).
(d) Once approved and certified to provide Basic Health Services by EOAI, a Residence must notify Residents of the availability of such services for eligible Residents prior to initiating the provision of such services.
(e) EOAI shall make available electronic copies of the required components of Basic Health Services operating plans on its website.

(8) Certification Fee and Basic Health Services Annual Fee. Upon receiving notice of Certification, a Sponsor shall forward within ten days to EOAI a Certification fee set by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, based on the number of Units certified on the date of its most recent Application. In the event that the Applicant or Sponsor of an Assisted Living Residence alters the Residence by the addition or removal of Units, a fee adjustment may be made by EOAI. No fee for initial certification or certification renewal shall be due from any Assisted Living Residence created under the HUD Assisted Living Conversion Program. If the Residence is certified to provide Basic Health Services, the Residence shall forward within ten days of the certification, or within ten days of the anniversary of said certification as applicable, an annual Basic Health Services fee set by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B. Failure to pay any of the fees required by 651 CMR 12.03 within the ten-day period shall result in a finding of non-compliance by EOAI under 651 CMR 12.09.

(9) Renewal Certification Procedures.
(a) The Application for renewal of a Certification shall be filed on a form provided by EOAI, include an Application fee as set by the Secretary for Administration and Finance and follow the procedures set forth in 651 CMR 12.03.
(b) If the Application for renewal of a Certification is filed and date-stamped at EOAI at least 30 days before the stated expiration date of the Certification, the Certification shall not expire until EOAI notifies the Sponsor that the Application for renewal has been denied.
(c) Term of Renewal Certification. EOAI will renew for a term of two years the Certification of a Residence if EOAI determines that the Sponsor and the Residence meet the requirements of M.G.L. c. 19D and 651 CMR 12.00.

12.03: continued

(10) Change of Ownership.

(a) Any person or entity who intends to acquire a 5% or greater interest in an existing Assisted Living Residence shall submit an Application for Certification to EOAI at least 30 days prior to the change of the ownership interest.

1. The Application for Certification shall include a statement on a form developed by EOAI, signed and notarized by the parties, regarding the anticipated change of ownership of the Residence.

2. If EOAI receives these documents at least 30 days prior to the effective date of the change of ownership, the new Applicant shall be considered to be deemed temporarily certified from and after the date of the change of ownership, until such time as EOAI approves or denies the Applicant's Application for Certification.

(b) Within five days after the Transfer of Ownership or change of ownership is completed:

1. The new Applicant must submit a signed and notarized statement confirming the change of ownership or Transfer of Ownership is complete. The new Applicant must notify all current Residents, Resident Representatives or Legal Representatives, if applicable, and prospective Residents that the change of ownership or Transfer of Ownership has occurred and that the Residence is awaiting EOAI's decision on the new Sponsor's Application for Certification; and

2. The previous Sponsor must return its Assisted Living Residence Certificate to EOAI.

(c) Any notice of hearing, order or decision that EOAI or the Secretary issues for a Residence prior to a Transfer of Ownership or change of ownership shall be effective against the former Sponsor prior to such change of ownership of Transfer of Ownership and, where appropriate, the new Sponsor, following such change of ownership or Transfer of Ownership unless said notice, order or decision is modified or dismissed by EOAI or by the Secretary.

(d) EOAI retains the discretion to conduct a full or partial compliance review in the event of a Transfer of Ownership or a change of ownership.

(e) Within 14 calendar days of EOAI approving the new Sponsor's Certification, the Residence must provide written notice to all Residents, their Legal Representatives and Resident Representatives (if applicable), and the Long-Term Care Ombudsman Program confirming EOAI's approval and issuance of the new Certificate.

(f) The Residence must make ownership information available to all Residents, Legal Representative and Resident Representatives (if applicable). The Residence must make ownership information available to prospective Residents, upon request.

(11) Closure. In the event a Sponsor of an Assisted Living Residence elects to permanently close or sell the Residence for any reason, compliance with the following notification procedures is required:

(a) Resident Notice. A written notice must be received by the Residents, their Legal Representatives, and their Resident Representatives (if applicable), at least 120 days prior to the date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence. At a minimum, such notice shall include:

1. The date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence;

2. A description of the actions the Sponsor will take to assist the Residents in securing comparable housing and services, if necessary;

3. A reference to the rights of the Residents that may be exercised under the landlord/tenant laws established under M.G.L. c. 186 or M.G.L. c. 239; and

4. The contact information for the Long-Term Care Ombudsman Program.

(b) EOAI Notice. A written notice must be received by EOAI at least 120 days prior to the date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence. Such notice shall include a copy of the Resident notice in accordance with 651 CMR 12.03(11)(a), proof of notification of all affected Residents and their Legal Representatives and Resident Representatives (as applicable), and the identification of all Residents receiving additional services, including but not limited to, Group Adult Foster Care.

(c) Long-Term Care Ombudsman Program Notice. A written notice must be received by the Long-Term Care Ombudsman Program at least 120 days prior to the date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence.

12.03: continued

(12) Suspension of Certification. If EOAI suspends the Certification of an Assisted Living Residence, the Sponsor shall display the notice of suspension in a prominent place in the Residence, in place of the Certification, so long as the suspension is in effect.

12.04: General Requirements for an Assisted Living Residence

An Assisted Living Residence shall meet the following requirements to obtain and maintain Certification:

(1) Physical Requirements.

(a) An Assisted Living Residence shall provide only single or double Units with lockable doors on the entry door of each Unit. Residents shall have exclusive rights to their Units with lockable doors at the entrance of their individual or shared Units, however, as part of a Resident's Service Plan, keys or access codes may be readily available to specified shift staff. This access must be noted in the Resident's Service Plan.

(b) All Newly Constructed Assisted Living Residences shall provide a private bathroom for each Unit which shall be equipped with at least one lavatory, one toilet, and one bathtub or shower stall;

(c) All other Assisted Living Residences shall provide at a minimum, a private half-bathroom (*i.e.*, equipped with one washstand and one toilet) for each living Unit and shall provide at least one Bathing Facility for every three Residents;

(d) All Assisted Living Residences shall provide at a minimum, either a kitchenette or access to a refrigerator, sink, and heating element for all Residents, however, as part of a Resident's Service Plan, such access may be limited to supervised access;

(e) Every Assisted Living Residence shall meet the requirements of all applicable federal and state laws and regulations, including, but not limited to, the state sanitary code, state building and fire safety codes and regulations, and laws and regulations governing handicapped accessibility;

(f) Every Residence shall have an automated external defibrillator (AED) and ensure its proper upkeep.

(g) Every Residence shall have unexpired naloxone that is centrally located and readily accessible to Residence staff.

(h) Every Residence shall have unexpired epinephrine that is readily accessible to Residence staff.

(i) Every Residence shall provide a living area space which allows for communal dining and social engagement opportunities within the Residence.

(j) All equipment and supplies shall be kept in sanitary and good working condition.

(k) The premises shall be free of any condition that could reasonably be determined to pose a danger to Resident safety, especially in the event of an emergency or evacuation.

(l) Fire Protection.

1. All Residences shall have an approved annual fire inspection by the local fire department.

2. At least once a year, the Residence shall obtain instruction by the head of the local fire department or their representative on the duties of the Residence's employees in case of fire, and note such instruction sought and the date and type of instruction provided in the Residence's record.

3. Fire extinguishers shall be recharged and so labeled at least once a year.

4. If applicable, emergency lights shall be checked monthly by the individual in charge of the Residence, and if deficient, repaired immediately.

5. All exits shall be clearly identified by exit signs, adequately lighted and free from obstruction.

6. Clothes dryers must be kept in good working order and shall be inspected at the time of installation and annually thereafter. The lint screen and vent in the dryer must be properly maintained.

7. Kitchen hood extinguisher systems shall be properly maintained, inspected and certified.

(m) Oxygen Use and Storage.

1. All oxygen shall be used or stored in accordance with the National Fire Protection Association Code.

12.04: continued

2. A carrier appropriate for the transportation of oxygen shall be used when delivering or transporting oxygen.
3. Signs indicating oxygen is available, currently in use, or stored shall be conspicuously posted.
4. Oxygen tanks shall be safely stored and labeled when empty.

(2) Service and Service Coordination Requirements.

(a) Each Assisted Living Residence shall designate at least one Resident Care Director. The Resident Care Director shall be qualified by training and experience, and shall be responsible for the following:

1. Reviewing with the Resident the assessment and service options available to address needs and preferences identified under 651 CMR 12.04(7) and (8);
2. Implementation of the Service Plan developed under 651 CMR 12.04(8);
3. Monitoring the Resident's needs and the services provided by the Residence to address those needs;
4. Coordinating with and participating in the Quality Improvement and Assurance program, as set forth under 651 CMR 12.04(11); and
5. Maintaining complete and accurate records of Service Plans.
6. If the Resident Care Director is not a licensed nurse, they must work with a licensed nurse to ensure that the Resident's medical needs are being addressed and that the Service Plan is signed by the licensed nurse.

(b) The Sponsor of the Assisted Living Residence shall provide or arrange for the provision of the following services by personnel meeting standards for professional qualifications and training set forth in 651 CMR 12.05, 12.07, and 12.08:

1. For all Residents whose Service Plans so specify, supervision of and assistance with Activities of Daily Living, including at a minimum bathing, dressing, and ambulation, which may include the use of a Transfer Assistive Device or Mobility Assistive Device (if applicable) and similar tasks; and supervision or assistance with Instrumental Activities of Daily Living including at a minimum laundry, housekeeping, socialization and similar tasks;
2. Self-administered Medication Management (SAMM) of prescription or over-the-counter medication, if specified by a Resident's Service Plan. When assisting a Resident to self-administer medication the individual performing SAMM must:
   a. Remind the Resident to take the medication;
   b. Check the package to ensure that the name on the package is that of the Resident;
   c. Observe the Resident take the medication; and
   d. Document in writing the observation of the Resident's actions regarding the medication (*e.g.*, whether the Resident took or refused the medication, the date and time).
   e. Allow for the following:
      i. If requested by the Resident, the individual performing SAMM may open prepackaged medication or open containers, read the name of the medication and the directions on the label to the Resident, and respond to any questions the Resident may have regarding those directions.
      ii. The Residence may assist a Resident with SAMM from a medication container that has been removed from its original pharmacy-labeled packaging or container by another person (*e.g.*, by the Resident's family). Such assistance is not required of the Residence. If this service is to be provided, the Residence and Resident shall have a full written disclosure of the risks involved and consent by the Resident.
   f. Be performed only by:
      (i) an individual who has completed Personal Care Services Provider Training as set forth in 651 CMR 12.07(7) unless a relevant exemption set forth at 651 CMR 12.07(10) applies;
      (ii) a practitioner, as defined in M.G.L. c. 94C; or
      (iii) a nurse registered or licensed under the provisions of M.G.L. c. 112, § 74 or 74A to the extent allowed by laws, regulations and standards governing nursing practice in Massachusetts, and which does not include a nurse delegate under M.G.L. c. 112, § 80B.

12.04: continued

g. Central storage of a Resident's medications in an area outside of a Resident's Unit is prohibited. Residences shall provide a refrigerator to store medication in the Resident's Unit if refrigeration is required, and may employ a locked location in which to safely store medications within a Unit.

3. Timely assistance to Residents and prompt response to urgent or emergency needs:

a. By the presence of 24 hour per day on-site staff;

b. By the provision of personal emergency response systems for each Resident if the Service Plan requires or other means for the purpose of signaling such staff. The personal emergency response system must always be active and accessible to the Resident. Emergency response system calls must be answered in a timely and appropriate manner. No response shall exceed ten minutes.

c. Any additional response systems EOAI may require in accordance with the service needs of the Residents; and

d. Documented hourly safety checks in the SCR Units for twelve hours overnight.

4. Up to three regularly scheduled meals daily (minimum of one meal per day). All Assisted Living Residences shall use daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences set forth in the Title III of the Older Americans Act as amended (42 U.S.C. § 3030g) as a minimum dietary standard. In addition to the foregoing, at a minimum, an Assisted Living Residence shall provide or arrange for the availability of food selections that would permit a Resident to adhere to a diet consistent with the most recent edition of Dietary Guidelines for Americans and dietary plans that do not require complex calculations of nutrients or preparation of special food items. These dietary plans shall include sodium restricted, sugar restricted and low fat. The Residence shall have a qualified registered dietitian review the Residence's dietary plans at least every six months.

(3) Basic Health Services.

(a) The Provision of Basic Health Services.

1. Any Residence certified to provide Basic Health Services shall offer all such Basic Health Services included in 651 CMR 12.02.

2. Prior to providing Basic Health Services to a Resident, the Residence must:

a. obtain the written consent of the Resident or the Resident's Legal Representative or the Health Care Agent, as applicable, to receive Basic Health Services and document the written consent in the Resident record;

b. inform the Resident they have the option of retaining a third-party provider of their choice to provide equivalent Basic Health Services;

c. ensure that a Registered Nurse updates the Resident's Service Plan with the Resident's Medical Order and reviews with the Resident, Resident Representative, Health Care Agent, or Legal Representative, as applicable, said Service Plan;

d. provide and discuss the fees associated with the provision of Basic Health Services;

e. update the Resident's Residency Agreement to reflect the inclusion of Basic Health Services and any associated fees; and

f. include documentation in the Resident record to ensure the coordination of Basic Health Services with SAMM or LMA, as appropriate.

3. After obtaining Resident consent for the Residence to provide Basic Health Services, the Residence must update the Resident's Residency Agreement or amend it with a supplemental agreement that identifies the Basic Health Services to be provided to the Resident and any associated costs.

4. In the event a Resident retains a third-party provider of Basic Health Services, the Residence must coordinate with the third-party provider to the extent practicable and provide or obtain Resident records sufficient to ensure continuity of care and the safe provision of Basic Health Services. The Residence may not retaliate against a Resident who elects to retain a third-party provider of Basic Health Services.

5. The Residence must identify whether the Resident has a Health Care Proxy, whether the Health Care Proxy is invoked, and establish a means of contact with the Health Care Agent. If the Health Care Proxy is invoked, the Health Care Agent must be notified regarding the provision of Basic Health Services.

12.04: continued

6. Any Residence providing Basic Health Services shall comply with all state and federal standards regarding specimen collection and the completion of a home diagnostic test (*e.g.* a Certificate of Waiver for the Clinical Laboratory Improvement Amendments).

7. Medical Orders.

a. Basic Health Services may only be provided to a Resident in accordance with a valid Medical Order issued by a Licensed Independent Provider. The Medical Order shall be signed and dated by the Licensed Independent Provider.

b. Documentation of a Resident's Medical Order must be retained in the Resident record.

c. The Residence must regularly communicate with the Resident or Legal Representative or the Resident's Health Care Agent, if applicable. The Residence must maintain contact information for the Resident's Licensed Independent Provider to ensure the most recent Medical Order is on file and the Residence is aware of any potential changes to the Resident's needs.

d. In the event a new Medical Order is issued, the Residence must conduct an evaluation pursuant to 651 CMR 12.04(3)(a)8.

e. Basic Health Services may only be provided if the Resident's setting is deemed medically appropriate for such services and the proper equipment, including an automated external defibrillator (AED), medication, and supplies are readily available.

8. Before Basic Health Services are provided by the Residence, the Resident must be assessed and evaluated by a Registered Nurse to ensure:

a. the provision of Basic Health Services can be provided in a safe and effective manner that is consistent with scope of practice;

b. the Resident is properly identified and consents to such services;

c. a Resident's Medical Order is valid and up to date; and

d. any significant change in the Resident's condition is reported to the Resident's Licensed Independent Provider before the provision of Basic Health Services.

9. Service Requirements.

a. Basic Health Services must be provided by a Clinical Professional who has the training and demonstrated competency in providing such services within their scope of practice.

b. The Clinical Professional must identify the Basic Health Services provided and document each date and time such services are provided, as well as any assessment findings in the Resident's record.

c. Basic Health Services provided by the Residence must meet the standard of care for Clinical Professionals.

d. The Residence must coordinate with any licensed hospice provider for hospice care provided to a Resident pursuant to 651 CMR 12.04(4)(b)1 to ensure continuity of care.

e. All Residence staff providing care to a Resident receiving Basic Health Services must monitor the Resident's condition and notify the Clinical Professional as well as the Resident, or the Resident's Legal Representative or Health Care Agent, if applicable, and the Resident's Licensed Independent Provider, regarding any change in the Resident's condition.

10. Resident Service Plan, Resident Record, and Communication Log.

a. The Residence's Registered Nurse must develop the Resident's Service Plan in accordance with 651 CMR 12.04(8).

b. Upon the implementation of any revision to a Resident's Service Plan that includes the provision of Basic Health Services, the Residence shall review with the Resident, Resident Representative, or Legal Representative, as applicable, any changes to the fees associated with the provision of Basic Health Services established by the Resident's Residency Agreement, and shall document such review in the Resident record.

c. Documentation of all Basic Health Services provided to a Resident must be included in the Resident record.

12.04: continued

d. The provision of Basic Health Services delivered to participating Residents shall be included in the staff communication log as needed to communicate information necessary to maintain the continuity of care for Residents receiving Basic Health Services.

11. Residence Discontinuance.

a. A Residence opting to discontinue the provision of Basic Health Services must provide at least 120 days' notice to:

i. EOAI;

ii. all Residents, their Legal Representatives and Resident Representatives, as appropriate;

iii. the Residents' Licensed Independent Providers;

iv. the Residents' Health Care Agents, if applicable; and

v. the Long-Term Care Ombudsman.

b. The notice must include, at a minimum:

i. a statement of the Residence's intent to discontinue the provision of Basic Health Services and the basis for its decision;

ii. a proposed date of discontinuance not earlier than 120 days after the date of the notice; and

iii. a plan to ensure Residents are able to continue to receive Basic Health Services until other arrangements can be made.

c. The notice to be submitted to EOAI must also identify all affected Residents and include contact information for Residence staff responsible for managing the discontinuance of Basic Health Services, including the staff responsible for issuing the required notices to Residents and ensuring the continuity of care for affected Residents.

d. Upon the discontinuance of providing Basic Health Services, the Basic Health Services Certification will be amended to reflect the change in the Residence's operation.

(4) Skilled Care Services.

(a) The Sponsor may arrange for the provision of ancillary health services in the Residence. With the exception of the care included within the definition of Basic Health Services provided by Residences certified to provide Basic Health Services, the Sponsor may not use Assisted Living Residence staff for these services unless said staff is functioning as an employee of a Certified Provider of Ancillary Health Services or as an employee of a licensed hospice;

(b) No Assisted Living Residence shall admit a Resident who requires 24-hour skilled nursing supervision unless such Resident elects to receive Basic Health Services from Residences that are certified to provide such services and from qualified third parties who are capable of providing Skilled Nursing Care that is not included in Basic Health Services or the Resident elects to receive Skilled Nursing Care from a qualified third-party. No Assisted Living Residence shall provide Skilled Nursing Care or admit or retain a Resident in need of Skilled Nursing Care where such Resident receives services from qualified third parties unless the following criteria are met:

1. The Skilled Nursing Care will be provided by a Certified Provider of Ancillary Health Services or by a licensed hospice; and

2. The Certified Provider of Ancillary Health Services does not train the Assisted Living Residence staff to provide the Skilled Nursing Care.

(c) Nursing services provided by a Certified Provider of Ancillary Health Services such as injection of insulin or other drugs used routinely for maintenance therapy of a disease may be provided to Residents.

(d) Neither nurses employed by Residences nor nurses contracted by Residences shall direct any non-licensed staff to perform Skilled Nursing Care or to administer any medications to Residents, nor oversee nor supervise such practice, including as related to a nurse delegate under M.G.L. c. 112, § 80B.

12.04: continued

(5) Special Care. 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 651 CMR 12.04(5) in addition to all other requirements of 651 CMR 12.00. A Residence may not operate a Special Care Residence without submitting an operating plan to EOAI that explains how the Special Care Residence or Residences will meet the specialized needs of its resident population, including those who may need assistance in directing their own care due to cognitive or other impairments. This includes a description of the physical design of the structure and the units, physical environment, specialized safety features, enrichment activities, and the ongoing training of staff.

(a) All Special Care Residences shall be administered in accordance with the following safeguards:

1. Entry and exit doors in the common use areas within Special Care Residences shall be alarmed and secured in accordance with local, state and federal laws and regulations. All doors must automatically unlock in the case of fire, power outage or emergency situation;
2. Staff shall be trained and assigned according to the requirements of 651 CMR 12.06 and 12.07;
3. The Residence shall develop and implement a 24-hour preparedness plan by assessing the needs of each occupant of any Special Care Residence for emergency assistance, and devise an appropriate method to provide the necessary assistance;
4. The Residence shall develop and implement policies and procedures to assess and reduce the risk of potential hazards in the physical environment related to the special characteristics of the population. Such policies and procedures must include an annual written statement describing in detail how the physical characteristics of any Special Care Residence have been or will be modified to promote the safety of its Residents;
5. The Residence shall develop Special Care Residence policies and procedures that address potentially unsafe Resident behaviors such as unsupervised wandering, and verbally or physically aggressive behavior including coercive or inappropriate sexual behavior;
6. The Residence shall develop policies and procedures governing the transition of Residents moving in or out of any Special Care Residence;
7. The Residence shall provide a multipurpose activity space; and
8. All Special Care Residences that commence an initial certification process after October 1, 2015 shall provide a secure outdoor space.

(b) Special Care Residences shall prepare a planned activity program that includes structured activities with designated staff a minimum of three times within a 24-hour period, seven days per week. The planned activity program shall address Resident needs in the following areas of Resident function, as applicable:

1. Gross motor activities;
2. Self-care activities;
3. Social activities; and
4. Sensory and memory enhancement activities.

(c) The 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).

(d) Administrative staff of the Residence qualified by training and experience shall review the operations of any Special Care Residence twice each year. The reviews may be conducted as part of the Residence Quality Improvement and Assurance program prescribed under 651 CMR 12.04(11). The Residence shall document the results of these reviews.

(6) Optional Services.

(a) The Assisted Living Residence may provide or arrange for the provision of the following optional services, including but not limited to:

1. Local transportation for medical and recreational purposes;
2. Barber or beauty services, sundries for personal consumption and other amenities;
3. Assistance to Residents with accessing telehealth services;

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4. Basic Health Services for Residents whose Service Plans include Basic Health Services, in accordance with the requirements set forth within M.G.L. c. 19D and 651 CMR 12.00, by personnel who meet the standards for professional qualifications and training set forth in regulations promulgated pursuant to M.G.L. c. 19D;

5. Ancillary services for health-related care including, but not limited to, restorative therapies, podiatry, hospice care, home health or other such services; provided, however, that such services shall be delivered by an individual licensed to provide such care;

6. Money management and other financial arrangements to be performed by an independent party for any Resident unable to manage their funds or property. The Sponsor shall not allow any employee of an Assisted Living Residence to control or manage the funds or property of a Resident; provided that the Sponsor may, at the request of the Resident or their Legal Representative, hold and disburse Resident funds, not to exceed $200, for personal use of the Resident. The Sponsor shall detail such agreements in the Resident's Service Plan; and

7. Limited Medication Administration (LMA) for Residents whose Service Plan include LMA.

a. The Residence must perform LMA from an original, pharmacy-filled and pharmacy-labeled container.

b. In addition to the requirements and limitations set forth in 651 CMR 12.04(4), a nurse with a valid Massachusetts nursing license employed by the Assisted Living Residence may administer non-injectable medications, prescribed or ordered by an authorized prescriber, by oral or other methods (*e.g.* topical, inhalers, eye and ear drops, medical patches, as necessary oxygen, suppositories). LMA performed by a licensed nurse must be completed in accordance with all applicable laws, regulations and standards governing the medication administration process by a nurse, including documentation requirements.

c. In accordance with the standards of nursing practice, a nurse may only administer medication from an original, pharmacy-filled and pharmacy-labeled container. All medication must be kept in the Resident's Unit and stored in such a manner that the nurse can adequately verify the integrity of the medication.

(b) Discontinuance of Optional Services.

1. Resident Discontinuance.

a. Planned Discontinuance or Pause in Services.

i. A Resident may pause or discontinue receiving optional services, including, but not limited to, Basic Health Services and Limited Medication Administration, from the Residence upon written notice to the Residence.

ii. For any planned pause or discontinuance of optional services, the Resident shall give the Residence at least 14 days' advance written notice of the date on which services are to be paused or discontinued.

iii. A Resident who has properly submitted written notice under 651 CMR 12.04(6)(b)1.a.ii. shall not be charged a cancellation fee or a fee for services not provided due to such planned pause or discontinuance.

b. Unplanned Discontinuance or Pause.

i. If a Resident must pause or discontinue optional services because of an unplanned or emergent event (*e.g.*, hospitalization, acute illness, or other unexpected change in condition), the Resident or their representative, if applicable, shall notify the Residence in writing as soon as reasonably practicable.

ii. Upon receipt of such written notice, the Residence shall accommodate the change immediately. The Residence may not assess a fee for the optional services not provided 24 hours after receipt of the written notice. In accordance with M.G.L. c. 19D, § 10, a Resident shall not be charged a cancellation fee or a fee for services not provided due to the discontinuation of Basic Health Services.

(7) Screening and Assessment.

(a) Prior to signing a Residency Agreement and a Resident moving in, the Residence must arrange for an in-person initial assessment conducted by a nurse shall determine:

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1. The prospective Resident's service needs and preferences and the ability of the Residence to meet those needs;
2. The Resident's physical and functional abilities;
3. The Resident's cognitive status and psychosocial condition;
4. Whether a medication program (*e.g.* SAMM or LMA) is appropriate and which medication program, based on the following:
   a. The completion of an observational assessment by a nurse to determine whether the Resident is capable of performing the particular method(s) of independent medication administration; and,
   b. A written statement by that nurse documenting the Resident's capability of performing the particular method(s) of independent medication administration;
5. Whether the Resident requires Basic Health Services;
6. Whether the Resident is at risk for elopement;
7. Whether the Resident is suitable for a Special Care Residence; and
8. Whether the Resident requires special assistance during an emergency or evacuation. The assessment must specify what type of assistance the Resident requires.
9. Whether the Resident has any special dietary needs or requirements.

(b) The nurse's assessment must validate any information provided by the Resident, their Legal Representative, or Resident Representative, if applicable. The nurse's assessment must also include an evaluation by the Resident's physician or authorized practitioner, of the prospective Resident's physical, cognitive, functional, and psychosocial condition conducted within the past 90 days. The preadmission assessment shall note the name of any Legal Representative, Health Care Agent, or any other person who has been documented as having decision-making authority for the Resident and the scope of their authority. The Residence shall collect any relevant documentation before move-in.

(c) The initial assessment findings shall be documented and disclosed to the Resident, their Legal Representative and Resident Representative, if any, prior to the Service Plan development and before the Resident moves into the Residence, and must be reviewed by a nurse employed by the Residence.

(8) Service Plan Development.

(a) The nurse and Resident Care Director shall develop an individualized Service Plan for each Resident in accordance with the findings of the initial screening described in 651 CMR 12.04(7).

1. Said Service Plan shall be developed before the Resident moves into the Residence and be based on information provided by the Resident, their Legal Representative and Resident Representative, if applicable.
2. The Residence shall ensure the Resident's participation in the development of the Service Plan to the maximum extent possible and shall include the Legal Representative, any Health Care Agent, or Resident Representative to the extent that they are authorized, willing, and able to be involved. The parties must have a thorough conversation that must be documented by the Residence. The conversation must include:
   a. the services that will be provided to the Resident, including a breakdown of associated costs;
   b. any potential or anticipated future services that may be required based on the Resident's changing needs as well as an estimated cost for such services; and
   c. any other information that may be necessary to ensure the Resident's health, safety, and welfare.
3. If the Resident's Licensed Independent Provider has issued a Medical Order for the provision of Basic Health Services, a Registered Nurse, shall consult with said Licensed Independent Provider when developing the Resident's Service Plan.

(b) The Service Plan shall include an evaluation, conducted within the past three months by the Resident's physician or authorized practitioner, of the prospective Resident's physical, cognitive, functional, and psychosocial condition. It is the responsibility of the Resident or their representative to have the physician's or authorized practitioner's evaluation completed. This evaluation may be the same evaluation that is required in 651 CMR 12.04(7)(a).

(c) The Residence shall, at a minimum, document its assessment findings for the Resident on the following:

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1. Allergies;
2. Diagnoses;
3. Medications (including dosage, method of administration and frequency);
4. Dietary needs;
5. Fall risk, especially nighttime fall risk and risk of falling from the bed during sleep;
6. The need for assistance in emergency situations or evacuations. The Service Plan must detail what type of assistance the Resident requires during an emergency or evacuation;
7. If the Resident requires a new Mobility Assistive Device or there is a change in the current use of the device, an assessment must be completed by a Massachusetts licensed occupational therapist or physical therapist. An assessment must also be completed after any significant change in condition.
8. If the Resident requires a new Transfer Assistive Device or there is a change in the current use of the device, an assessment must be completed by a Massachusetts licensed occupational therapist or physical therapist. An assessment must also be completed after any significant change in condition. For a Transfer Assistive Device that is affixed to a Resident's bed, a Massachusetts licensed occupational therapist or physical therapist must conduct an assessment every six months.
9. The need for assistance with transfers that require the use of a Lift Device, if applicable;
10. History of psychosocial issues including the presence of manifestations of distress, or behaviors which may present a risk to the health and safety of the Resident or others;
11. Level of personal care needs, including ability to perform ADLs and IADLs;
12. Ability of the Resident to manage medication, including the ability to take medication on an as-needed basis; and
13. The type and frequency of Basic Health Services to be provided, if applicable.

(d) The Resident Care Director or nurse shall review the Resident's initial Service Plan within 30 days of the commencement of residency and document the review to ensure the Resident's needs and preferences are accurately incorporated therein and that the Residence is capable of meeting the Resident's needs in accordance with 651 CMR 12.00. The initial Service Plan shall be in writing, signed and dated by the Resident or their Legal Representative, and by the Sponsor or their representative.

(9) Service Plan Requirements.

(a) Each Service Plan shall be based on a current assessment of the Resident, and indicate the following:

1. A description of all the services to be provided, along with all the fees for services;
2. The Resident's goals, and the frequency and duration of all services provided to address the Resident's particular physical, cognitive, psychological and social needs, including but not limited to the following:
   a. Details of the manner in which the Residence shall provide for the presence of a 24-hour per day, on-site staff, and the manner in which the Residence shall provide for personal emergency response devices or procedures;
   b. Details of the types of assistance with medications that the Residence shall provide, if any;
   c. Details regarding the provision of Basic Health Services, if applicable;
   d. Description of services, including the provision of Basic Health Services, if applicable, that will be provided by a person or entity not affiliated with the Assisted Living Residence or by a certified provider of ancillary health services (*e.g.* VNA services, private duty aides, adult day care) if the Resident, Resident Representative, or Legal Representative notifies the Assisted Living Residence that he or she has arranged for such services; and
   e. The need for a meal plan prescribed or ordered by a Resident's physician. The Residence shall have a qualified registered dietitian review the Resident's dietary needs, and provide the Resident with diet management counseling; and
3. The identification of staff or categories of staff who will provide the services;
4. The schedule and methods of monitoring assessments and services of the Resident;
5. The schedule and methods of monitoring staff providing services;

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6. The use of a Transfer Assistive Device or Mobility Assistive Device(s) by or for a Resident. A Transfer Assistive Device or Mobility Assistive Device may only be used for the purpose of enhancing Resident independence in mobility and transfers. The Residence must collaborate with the Resident or Legal Representative, as applicable. The Service Plan must:

a. Include the purpose and intended outcome for use of the Transfer Assistive Device or Mobility Assistive Device. The Transfer Assistive Device or Mobility Assistive Device must be assessed for proper use by the Resident.

b. Distinguish between devices that:

i. Enhance mobility;

ii. Provide positional support;

iii. Provide transfer support; or

iv. Address specific medical needs.

c. Address the circumstances under which the Transfer or Mobility Assistive Device should and should not be used.

i. The Transfer or Mobility Assistive Device must not have the effect of restricting the Resident's voluntary movement.

ii. The Resident must be able to enter and exit a bed freely and independently with no additional assistance when using a Transfer Assistive Device affixed to a Resident's bed.

iii. The use of any bed rail is limited to those that cover less than half the length of the bed. The use of full-length bed rails is prohibited.

iv. Service planning and assessment for Residents who utilize Transfer Assistive Devices or Mobility Assistive Devices shall address the Resident's physical and cognitive abilities to safely and effectively use the device and shall identify any necessary supports, supervisions, or interventions required to promote Resident safety.

d. Note the staff positions trained to assist with the use of Transfer or Mobility Assistive Devices.

e. Include the consent of the Resident or Legal Representative, as applicable.

f. Include documentation that the Residence provided written disclosure(s) and information explaining the risks associated with a Transfer Assistive Device or Mobility Assistive Device to the Resident or their Legal Representative, if applicable.

g. Include usage guidelines. The usage guidelines must be strictly followed by either trained staff or, where appropriate, the Resident, to mitigate the risks of falls or injury during movement and transfers.

7. The Service Plans for Residents residing in Special Care Units must indicate the enrichment activities provided to them as set forth in 651 CMR 12.04(5).

8. The need for assistance during an emergency or an evacuation. The Service Plan must detail what type of assistance the Resident requires during an emergency or an evacuation.

(b) All Service Plans shall be in writing, signed and dated by the Resident or their Legal Representative, and any Health Care Agent, if applicable, and by the Sponsor or their representative. A copy of the Resident's Service Plan shall be given to the Resident or their Legal Representative, as applicable.

(c) Following the Service Plan review required by 651 CMR 12.04(8)(d), the Resident Care Director or nurse shall:

1. Reassess the Service Plan not less than every six months, or

i. at any time upon identifying an improvement in the Resident's condition;

ii. at any time upon identifying a decline in the Resident's condition that will not normally resolve itself without intervention by staff, is not self-limiting, impacts more than one area of the Resident's health status, and requires interdisciplinary review and/or revision of the Service Plan; or,

iii. at any time upon receipt of a new or modified Medical Order for a Resident who receives Basic Health Services.

2. Reassess the Service Plan not less than every three months for Residents who receive Basic Health Services;

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3. Document the Service Plan review to ensure the Resident's needs and preferences are accurately incorporated therein and that the Residence is capable of meeting the Resident's needs in accordance with 651 CMR 12.00.

4. Ensure that the Service Plan has been signed by the Resident or their Legal Representative, and any Health Care Agent, if applicable, after a Service Plan review has occurred.

5. Sign the Service Plan any time a review of the Resident's Service Plan has occurred.

(d) The Service Plan shall be confidential except to the extent necessary to provide services and manage the operations of the Assisted Living Residence or to the extent the Service Plan is subject to disclosure as required by law; provided that EOAI may review the Service Plan at any time with the consent of the Resident or their Legal Representative.

(10) Ombudsman Requirements. The Applicant or Sponsor of an Assisted Living Residence is required to assist the Long-Term Care Ombudsman Program in its duties as a condition of maintaining Certification. *See* 101 CMR 30.00: *Statewide Long-Term Care Ombudsman Program*.

(11) Quality Assurance and Performance Improvement. The Residence shall establish an effective, ongoing quality improvement and assurance program to evaluate its operations and services to continuously improve services and operations, and to assure Resident health, safety, and welfare. The program should encompass oversight and monitoring of Residence services, ongoing quality improvement, and implementation of any plan that addresses improved quality of services. Residence staff shall gather, review and analyze data at least annually unless otherwise specified to evaluate its provision of services to its residents and assess the overall outcome of services and planning and Resident experience of care. The program must be based on analysis of relevant information focusing on Resident safety, well-being and satisfaction. The program shall include but not be limited to review and assessment of the following operations:

(a) Service Planning. The Residence shall review a random sample of Resident assessments, Service Plan and progress notes at least once each year to ensure that the Residents' Service Plans have been implemented and meet the Residents' general needs and any self-identified goals.

(b) Resident Safety Assurances. The Residence shall review policies and procedures designed to ensure a safe environment for all residents. Such policies and procedures shall include an Evidence Informed Falls Prevention Program. The emergency response system must be tested at a minimum quarterly. These tests must be documented. In addition, the Residence must monitor response call times and utilize a documented Quality Assurance and Performance Improvement (QAPI) process, at least quarterly, to reduce response times and immediately address and prevent extended response times. The Residence must be able to obtain and provide all response times as well as average response times by month. The Residence must perform quarterly checks to ensure that the Residence is free from conditions that could reasonably be determined to pose a danger to Resident safety, especially in the event of an emergency or evacuation.

(c) Medication Quality Plan. The Residence shall develop and implement systems that support and promote safe SAMM, and if applicable, LMA and Basic Health Services programs. The Medication quality plan shall include but need not be limited to the following components:

1. Semiannual evaluation of each Personal Care Staff that examines their awareness of SAMM and LMA regulations and applicable policies, and verifies their demonstrated ability to comply with SAMM and LMA regulations and related Residence policies and procedures;

2. A quarterly audit of a random sample of the Residence medication documentation sheets required under 651 CMR 12.04(2)(b)2. or 651 CMR 12.04(6)(a)7.b. to ensure compliance with SAMM and LMA protocols and Residence policies; and

3. A quarterly audit of all Medication Errors. All Medication Errors occurring at a Residence shall be recorded, tracked, and reviewed.

(d) A system shall be in place to facilitate the detection of issues and problems, to expedite the implementation of action, to resolve problems and communicate outcomes of actions taken or refused. Information solicited from Residents should be collected in a manner which offers anonymity (*e.g.*, suggestion box, resident satisfaction surveys, *etc.*).

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(e) Data analysis shall be used to identify and implement changes that will improve performance or reduce the risk of Resident harm. The Residence shall maintain documentation demonstrating it has collected and analyzed data, implemented appropriate actions to address identified issues and resolve problems, and shall note any recommended follow-up actions and whether or not they were performed.

(f) The result of the quality assurance and performance improvement program cannot be the sole basis for a determination of non-compliance pursuant to 651 CMR 12.09.

(g) Quality Assurance and Performance Improvement (QAPI) Committee. Residences providing Basic Health Services must establish a quality assurance and performance improvement committee, which must consist of, at a minimum, a Clinical Professional and the Executive Director of the Residence, and, as needed, a physician, advanced practice registered nurse, or a representative of the relevant pharmacy. Quality Assurance and Performance Improvement Committee meetings shall be held quarterly at a minimum and whenever a Serious Incident or Medication Error involving Basic Health Services occurs.

(12) Disaster and Emergency Preparedness Plan and Reporting Requirements. Each Residence shall have a comprehensive disaster and emergency preparedness plan to meet potential disasters and emergencies, including fire; flood; severe weather; loss of heat, electricity, 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. The Residence must review and update the plan every year. This review of the plan must be documented in the plan.

(a) Plan Requirements.

1. The plan shall be developed in conjunction with local and state emergency planners as well as local and state fire and safety experts. The plan and any changes to the plan must include the following elements:

a. an evacuation strategy for both immediate evacuations, for such events as fires or gas leaks, as well as delayed evacuations, for such events as impending severe weather;

b. an established Mutual Aid plan that addresses essential issues, such as supplies, staff, and beds;

c. the provisions of subsistence needs for staff and Residents, whether they evacuate or shelter in place, including, but not limited to the following:

i. food, water, medical, and pharmaceutical supplies;

ii. alternate sources of energy to maintain:

1. Temperatures to protect Resident health and safety and for the safe and sanitary storage of provisions;

2. Emergency lighting;

3. Fire detection, extinguishing, and alarm systems; and

4. Sewage and waste disposal;

c. an established relationship with local public safety officials and with local Emergency Management Services (EMS) officials;

d. participation in Health and Homeland Alert Network (HHAN);

e. protocols for full participation in safety alert or notification systems or processes for missing and vulnerable persons and elopements, such as the Silver Alert System (a system to register people at risk of wandering with participating local or county law enforcement to expedite their safe recovery in the event they become lost); and

f. A documented, Residence-based and community-based risk assessment utilizing an all-hazards approach, including missing Residents.

2. The plan shall indicate the locations of alarm signals and fire extinguishers, the locations of emergency exits; the evacuation routes and the procedures for evacuating Residents; and the assignment of specific tasks and responsibilities to the personnel of each shift;

3. The plan must include protocols for regularly checking and documenting compliance with all physical building and premises requirements, including routine checks of the Residence by staff to confirm that the building is safe, accessible, and free from conditions that could reasonably be determined to pose a danger to Resident safety, especially in the event of an emergency or evacuation;

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4. The plan must specify the persons to be notified during an emergency and must include the telephone numbers of police, fire, ambulance, and emergency medical transport to be contacted in an emergency;

5. The plan shall address the physical and cognitive needs of Residents, and shall include special staff response, including the procedures needed to ensure the safety of any Resident. The plan shall include provisions related to individuals residing in a Special Care Residence, and shall be amended or revised whenever any Resident with unusual needs is admitted. The plan must provide a means for the Residence to be able to remotely access copies of the Residents' records electronically, such as during an emergency;

6. The plan shall provide for the conducting of quarterly elopement and fire drills and rehearsals for all shifts, and annual simulated evacuation drills, and rehearsals for all shifts. Each staff person must participate at least annually in each of the following drills: simulated evacuation drill, elopement drill, and fire drill. These drills shall test the effectiveness of the plan;

7. Residences must seek to include Residents who are willing and able to participate in simulated evacuation drills at least annually, and must encourage and support such participation of all such Residents;

8. The Residence shall provide every Resident with a copy of the instructions they will be given under the plan, and shall have available for their review a copy of the plan.

9. The emergency procedures and evacuation route shall be posted in conspicuous locations throughout the Residence as well as in each Unit on the back of the door.

10. Each Residence shall ensure a reliable means is available at all times, in accordance with EOAI guidelines; for:

(a) sending information to the EOAI regarding incidents and emergencies occurring on the premises;

(b) receiving information from EOAI and other state and local authorities in the event of an emergency; and

(c) activating Mutual Aid.

11. The plan must include a communications section to ensure that Residents and their Resident Representatives, Legal Representatives, and Health Care Agents, as applicable, are able to receive communications and information from the Residence in the event of a storm or power outage.

(b) Staff Training. The Residence shall ensure disaster, and emergency preparedness by orienting new employees at the time of employment to the Residence's emergency preparedness plan, performing quarterly reviews of the emergency preparedness plan with employees, and making certain that all personnel are trained to perform the tasks assigned to them. Staff must also be trained on procedures regarding elopements, including the process for using elopement notification systems, such as the Silver Alert system.

(c) Serious Incident Reporting.

1. The Executive Director or their designee must provide a report in a form and format prescribed by EOAI to the EOAI Assisted Living Residence Certification Unit for any Serious Incident as defined in 651 CMR 12.02 occurring at the Residence. The Residence additionally must perform an incident investigation which may include, but is not limited to, determining whether any Resident has been harmed or placed at risk of harm and take appropriate action to treat the Resident, which may include sending the Resident to a healthcare facility for a medical evaluation or removing the risk of harm.

2. If a Resident has been harmed or placed at risk of harm, the Residence must notify the Resident, Health Care Agent, Resident Representative, or Legal Representative, if applicable.

3. Any incident involving theft must be reported to local law enforcement.

4. A facility-wide Serious Incident shall include, but is not limited to:

a. an outbreak of a serious communicable disease that is listed in 105 CMR 300.100: *Diseases Reportable to Local Boards of Health*;

b. an employee of a Residence found to be infected with a disease in a communicable form that is listed in 105 CMR 300.100;

c. pest infestation;

d. food poisoning as defined in 105 CMR 300.020: *Definitions*;

e. fire, flooding, or other natural disaster;

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f. structural damage to the Residence; and
g. A situation that displaces Residents from their Units for eight hours or more.
i. A situation that displaces Residents from their Units for eight hours or more must be reported to the EOAI Assisted Living Residences Certification Unit immediately.

5. A Resident-specific Serious Incident shall include, but is not limited to:
a. accidental injury;
b. a significant injury, including trauma to a Resident's head;
c. a Resident fall that resulted in a fracture or suspected fracture or head trauma;
d. a preventable pressure injury;
e. Unanticipated Death;
f. suicide or suicide attempt;
g. a physical or sexual assault by or against a Resident;
h. a complaint of Resident abuse, neglect, or exploitation; a complaint of suspected Resident abuse, neglect, or exploitation; or referral of a complaint of Resident abuse, neglect, or exploitation to a local or state authority;
i. a Medication Error requiring medical attention;
j. any use of a Restraint;
elopement with an absence of greater than 30 minutes;
k. misuse of a Resident's funds by the Residence or its staff;
l. any incident or injury involving Basic Health Services; and
m. Medication Diversion.

6. Any report required under 651 CMR 12.04(12)(c) shall be filed with the Assisted Living Certification Unit within 24 hours after the occurrence of the incident or accident via EOAI's online filing system. In the event the online filing system is inaccessible, a Residence must submit a temporary report *via* email and formally submit the official report *via* the online filing system as soon as the service becomes accessible. The information submitted in the incident report must be accurate and include all details associated with the incident. This requirement is in addition to the requirements of M.G.L. c. 19A, § 15, and of any other applicable law.

7. A Residence must cooperate with EOAI and other relevant authorities at all times, including investigations involving the provision of Basic Health Services.

(13) Communicable Disease Control Plan. The Residence must implement a plan to prevent and limit the spread of communicable disease. The plan shall conform to the currently accepted standards for principles of universal precautions based on DPH guidelines and shall include but need not be limited to the following components:

(a) A system to effectively identify and manage communicable diseases;

(b) Organized arrangements to provide the necessary supplies, equipment and personal protective equipment (PPE), consistent with transmission-based precautions under DPH guidelines; and

(c) A process for maintaining records of illnesses and associated incidents involving Residents as well as staff pursuant to 651 CMR 12.06(9)(a).

(14) Reports to EOAI.

(a) Annual Reports.

1. A Sponsor shall file annually, within 90 days following the end of an Assisted Living Residence's fiscal year on a form prescribed by EOAI, a statement and professional opinion prepared by a certified public accountant or comparable reviewer indicating whether the Assisted Living Residence is in sound fiscal condition and is maintaining sufficient cash flow and reserves to meet the requirements of the Service Plans established for its Residents. Upon written request to EOAI, the Secretary may extend such 90-day period by an additional period, not to exceed 30 days

2. Each Residence shall file annually on a form prescribed by EOAI, a completed report of aggregate information regarding Residents which is based, where applicable, on the most recent Resident assessments and Service Plans. The reporting period shall be January 1st through December 31st, and the report shall be submitted to EOAI no later than March 1st of the next year. Failure to timely submit a completed annual report will result in a finding of noncompliance.

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(b) Additional Reporting Requirements.

1. The Sponsor must notify EOAI in a form and format prescribed by EOAI at least 30 days prior to any Alteration of the Residence, its Units, or its operating plan. Such notice shall identify the specific changes made to any document which would amend, supplement, update or otherwise alter the operating plan, original Application or renewal for Certification. The notice shall be filed with EOAI at least 30 days prior to the effective date of the Alteration.

2. In addition to the requirements of 651 CMR 12.04(12)(c), the Sponsor shall forward to EOAI a copy of any report or citation of a violation of applicable provisions of the State Sanitary Code, State Building Code, fire safety regulations or other regulations affecting the health, safety, or welfare of Residents within seven days of receipt of notice of such violation.

3. Within 5 business days after an Assisted Living Residence Executive Director or Resident Care Director leaves their position, the Residence shall forward the contact information for any interim or new Executive Director or Resident Care Director to EOAI, including telephone number(s) and email address.

4. EOAI may determine further reporting is necessary and issue written notice to all Residences specifying the additional information required, including the prescribed format and any applicable submission deadlines. Each Residence shall, within the time frame provided in such notice, furnish the requested additional information in accordance with the instructions established by EOAI.

5. All information required by 651 CMR 12.03(2) or otherwise required by the Secretary shall be kept current by each Applicant or Sponsor.

(15) Controlled Substances. Each Residence shall create policies and procedures intended to prevent the theft or diversion of Controlled Substances prescribed to Residents who participate in SAMM, LMA, or Basic Health Services. Such procedures shall include:

(a) a reporting process by which any such incidents of theft or diversion are reported, documented and investigated;

(b) safeguards for the storage and disposal of all controlled substances that have been prescribed for Residents participating in SAMM, LMA, and Basic Health Services; and

(c) prompt reporting of any theft or diversion of any Controlled Substance to all appropriate agencies, including local law enforcement.

(16) Distribution of Information on Palliative Care and End-of-life Options.

(a) A Residence shall distribute culturally and linguistically suitable information regarding the availability of palliative care and end-of-life options to all Residents who have provided information indicating that their attending health care practitioner has:

1. diagnosed the Resident with a terminal illness or condition which can reasonably be expected to cause the Resident's death within six months, whether or not treatment is provided; or

2. determined that the Resident may benefit from hospice or palliative care services.

(b) This obligation shall be fulfilled by providing the Resident with:

1. information made available to the Residence by EOAI regarding the availability of palliative care and end-of-life options; or

2. information produced by the Residence that satisfies the requirements established by M.G.L. c. 111, § 227.

(c) Each Residence shall provide information to all physicians and nurse practitioners providing care within or on behalf of the Residence regarding the requirement of M.G.L. c. 111, § 227(c) that they offer to provide end-of-life counseling to Residents meeting the criteria established by 651 CMR 12.04(16)(a).

(d) Each Residence shall make available to EOAI proof that it is in compliance with 651 CMR 12.04(16)(a) through (c) upon request, or at the time of compliance review.

(17) Exemptions.

(a) At their discretion, the Secretary may grant an exemption from the requirements set forth in 651 CMR 12.04(1)(b), (c), and/or (5)(a)8 if it is determined that:

1. Public necessity and convenience requires such an exemption;

2. The granting of such an exemption shall prevent undue economic hardship; and

12.04: continued

3. The Assisted Living Residence otherwise meets the purposes of assisted living to provide a home-like residential environment.

(b) The Applicant/Sponsor shall request such an exemption in writing and shall enclose supporting documentation. The Secretary may grant such an exemption at their discretion.

(c) Exemption requests must be filed prior to the commencement of construction or renovation of the Residence. Any exemption request filed after construction or renovation has commenced will be deemed presumptively untimely unless the Applicant or Sponsor can demonstrate that there were specific and exigent circumstances that prevented the filing of the exemption request prior to commencement of construction or renovation of the Residence.

12.05: Record Requirements

All records created or maintained by the Assisted Living Residence shall be legible, recorded in ink, and contemporaneously signed and dated to indicate the name and position of the individual who makes the record entry. Computerized records systems which meet the equivalent requirements in 651 CMR 12.05 for permanency and accessibility, and which provide an auditable record of entries may be used as an alternative or supplement. All records must be retained for at least six years unless otherwise specified.

(1) Resident Record. The Assisted Living Residence shall develop and maintain written Resident records which shall remain confidential but for the limited exception of EOAI's enforcement of 651 CMR 12.00 or to the extent the Resident record is subject to disclosure as required by law. The Resident record and related documents are considered permanent and shall be maintained for the duration of the Resident's stay in the Assisted Living Residence and for at least six years after the date of termination of the Agreement. By January 1, 2027, the Residence must maintain an electronic copy of the Resident's records, including the Resident's Service Plan, and ensure that the electronic record is accessible remotely during an emergency. The Resident record shall include, at a minimum, the following:

(a) Resident assessment, documented in accordance with the requirements set forth at 651 CMR 12.04(7)(a) through (c);

(b) Service Plans documented in accordance with the requirements of 651 CMR 12.04(9);

(c) Progress notes, which shall document significant occurrences, either observed by or reported to Residence staff, including significant or continued changes in the Resident's behavior or memory; incidents involving injury, trauma, illness, or abuse or neglect of the Resident, including but not limited to the recording of incidents in which a Resident has been the victim of an assault by another Resident or the perpetrator of an assault on another resident, regardless of whether such a report would be required by law; alleged or actual violations of the Resident's rights as defined in 651 CMR 12.08; and changes in the Resident's Service Plan;

(d) Documentation of Introductory Visits set forth at 651 CMR 12.07(8);

(e) Documentation of Self-administered Medication Management, including the medication assessment required by 651 CMR 12.04(7)(a)4.a. through b.;

(f) Documentation of all aspects of Limited Medication Administration, if applicable. This includes, but is not limited to, a proper written medication order from an authorized prescriber, documentation of the name, dose, route of administration, and time the medication is administered. The nurse who administers the medication shall sign or initial the documentation;

(g) The following documents are also part of the Resident record, and may be kept in a separate location(s):

1. Any applicable guardianship orders, authorized powers of attorney, Health Care Proxy documents, living wills, Medical Orders for Life-Sustaining Treatment (MOLST)/Portable Orders for Life-Sustaining Treatment (POLST) documents and other relevant documents affecting or directing Resident care (including Department of Public Health Comfort Care/"Do Not Resuscitate Order Verification Form", provided that their existence and location is conspicuously documented in the Resident's record and they are immediately available in case of an emergency;

2. The original Residency Agreement and any documents which extend or amend the Residency Agreement; and

12.05: continued

3. The Disclosure of Rights and Services required by 651 CMR 12.08(3) and, if applicable, any disclosures provided to Residents receiving Basic Health Services as required by 651 CMR 12.08(5).

(h) In addition to the items required in 651 CMR 12.08(2)(a) through (g), for Residents receiving Basic Health Services from a Residence certified to provide Basic Health Services, the following shall apply:

1. the Resident record must also include, at a minimum, the following:

a. active valid Medical Orders signed and dated within the past 12 months authorizing the provision of Basic Health Services, and expired Medical Orders, if applicable;

b. written consent to receive Basic Health Services as referenced in 651 CMR 12.04(3)(a)2.a. from the Resident, Legal Representative, or if applicable, the Resident's Health Care Agent;

c. Resident assessments conducted in accordance with 651 CMR 12.04(9);

d. a record documenting each time Basic Health Services are provided to a Resident; and

e. the original Residency Agreement and any supplemental documents concerning the provision of Basic Health Services.

(2) Census Record. Each Residence shall maintain a current census document. Each census document shall be kept for a minimum of two years and be updated at least weekly, listing. The census document shall be available and accessible at all times. The census document must include the name of and level of assistance for each Resident, and clearly indicate:

(a) Residents residing in each occupied certified Unit;
(b) Residents residing in traditional Units;
(c) Residents residing in Special Care Units;
(d) Residents receiving Basic Health Services;
(e) Residents using Transfer Assistive Devices or Mobility Assistive Devices;
(f) Residents receiving oxygen;
(g) Residents receiving Self-administered Medication Management;
(h) Residents receiving Limited Medication Administration;
(i) Residents on leave of absence;
(j) Residents who will need special assistance during an emergency and what type of assistance is required; and
(k) Residents who are veterans.

(3) Personnel Record Requirements. The Assisted Living Residence shall develop and maintain written personnel records and maintain copies of its personnel policies and procedures. Each personnel record shall include at a minimum the following:

(a) Job description signed and dated by the employee;
(b) Educational preparation and work experience;
(c) A copy of any current licensure or certification, including a current certification for cardiopulmonary resuscitation (CPR) and automated external defibrillation (AED) training, if applicable;
(d) Documentation of completion of the 54-hour Personal Care Services Training set forth in 651 CMR 12.07(7), if applicable;
(e) Documentation of attendance at Personnel Orientation as set forth in 651 CMR 12.07;
(f) Documentation of the successful completion of all required trainings;
(g) Documentation of reports of criminal offender record information;
(h) Documentation of annual performance evaluation;
(i) Documentation of attendance at in-service training; and
(j) Copies of any disciplinary letters or reports.

(4) Basic Health Services Personnel Records. The Residence shall develop and maintain written personnel records that identify the staff who are authorized to provide Basic Health Services and maintain records of the qualifications and applicable licenses of such staff. The Residence must also document the required trainings attended by employees providing Basic Health Services and retain all performance evaluations.

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(5) Communication Logs. The Residence must maintain a staff communication log for each 24-hour period that communicates information necessary to maintain the continuity of care for all Residents. The communication log must be retained for the duration of each Certification period and until the Residence is recertified.

(6) Emergency Response System Logs. The Residence must record and maintain all instances of and response times to Resident emergency response system calls, including the date, time of call, time of response, name of Resident, and name(s) of responding staff. The emergency response system log must be retained for the duration of each Certification period and until the Residence is recertified.

(7) SCR Hourly Safety Check Logs. The Residence must record and maintain a log of hourly safety checks performed in the SCR Units during the twelve hours overnight, including the date and time, the name of the Resident checked, and the name of the staff performing the overnight check. The SCR hourly safety check log must be retained for the duration of each Certification period and until the Residence is recertified.

(8) Fall Logs. The Residence must record and maintain a detailed fall log that records all incidents of falls, including the date and time, the location, the circumstances, the injuries sustained, and the immediate staff response. This log must be reviewed regularly by Residence staff for quality assurance and improvement purposes and be made available to EOAI as requested. The fall log must be retained for the duration of each Certification period and until the Residence is recertified.

(9) Quality Assurance and Performance Improvement Meeting Minutes. The Residence shall create and retain minutes of all meetings of the quality assurance and performance improvement committee held pursuant to 651 CMR 12.04(11)(g) for EOAI review. The meeting minutes must be retained for the duration of each Certification period and until the Residence is recertified.

12.06: Staffing Requirements

No person working in an Assisted Living Residence shall have been convicted of a felony related to the theft or illegal sale of a Controlled Substance.

(1) Qualifications for the Executive Director. The Executive Director of an Assisted Living Residence shall be at least 21 years old and must have demonstrated experience in administration, supervision, and management skills. The Executive Director must also have a Bachelor's degree or equivalent experience in human services management, housing management or nursing home management. The Executive Director must be of good moral character, and must never have been convicted of a felony.

(2) Qualifications for the Resident Care Director. The Resident Care Director of an Assisted Living Residence must have a minimum of five years' experience working with older adults or persons with disabilities or have a nursing degree with a minimum of two years' experience working with older adults or persons with disabilities. The Resident Care Director shall be qualified by experience and training to develop, maintain and implement or arrange for the implementation of individualized Service Plans. The Resident Care Director must also have a Bachelor's degree or equivalent experience, and knowledge of aging and disability issues. The requirement mandating a minimum of five years' experience working with older adults or persons with disabilities or having a nursing degree with a minimum of two years' experience working with older adults or persons with disabilities shall be effective as of January 1, 2027. This requirement shall not apply to a Resident Care Director hired before January 1, 2027. The qualification requirements for a Resident Care Director hired before January 1, 2027 are that the Resident Care Director must have a minimum of two years' experience working with older adults or persons with disabilities. The Resident Care Director shall be qualified by experience and training to develop, maintain and implement or arrange for the implementation of individualized Service Plans. The Resident Care Director must also have a Bachelor's degree or equivalent experience, and knowledge of aging and disability issues.

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(3) General Staffing Requirements.

(a) All staff shall possess appropriate qualifications to perform the job functions assigned to them.

(b) The Residence must have a minimum of one staff member available at all times who is certified in cardiopulmonary resuscitation (CPR) and in the use of an automated external defibrillator (AED). This requirement shall apply starting on January 1, 2027.

1. All persons certified to provide automated external defibrillation and cardiopulmonary resuscitation shall:

a. Successfully complete a course in cardiopulmonary resuscitation and in the use of an automated external defibrillator that meets or exceeds the standards established by the American Heart Association or the American National Red Cross;

b. Have evidence that course completion is current and not expired;

c. Complete a recertification course prior to the expiration date on their certification.

(c) No person working in a Residence shall have been determined by an administrative board or court to have violated any local, state or federal statute, regulation, ordinance, or other law reasonably related to the safety and well-being of a Resident at an Assisted Living Residence or patient at a health care facility.

(d) The Residence shall designate at least one licensed nurse employed by or under written agreement with the Residence to:

1. Conduct introductory visits pursuant to 651 CMR 12.07(8);

2. Conduct initial clinical assessments prior to a Resident moving to the Residence pursuant to 651 CMR 12.04(7)(a);

3. Oversee Self-Administered Medication Management (SAMM);

4. Conduct 20 hours of the Personal Care Services Training Requirements that is specific to the provision of Personal Care Services pursuant to 651 CMR 12.07(7) for all applicable staff. This requirement must be fulfilled be a qualified Registered Nurse with a valid Massachusetts license;

5. Conduct biannual evaluation of the provision of Personal Care Services by Personal Care Staff pursuant to 651 CMR 12.07(9);

6. Oversee and provide Limited Medication Administration (LMA) to Residents; and

7. Develop and oversee Service Plans as required in 651 CMR 12.04(8)(a) and 651 CMR 12.04(9)(c).

The designated licensed nurse must provide on site services for a minimum number of hours each week, scaled to the Residence's size, Resident acuity and needs, and be available on call 24 hours a day to support staff and respond to changes in Resident condition.

(e) The Residence shall contract with or employ a responsible clinician who is a licensed provider in the Commonwealth (*e.g.* a registered nurse, nurse practitioner, or physician) who shall be the automated external defibrillator person in charge for the Residence. The responsible clinician shall oversee and coordinate the following:

1. Maintenance and testing of equipment in accordance with the manufacturer's guidelines;

2. Certification and training of Residence personnel;

3. Periodic performance review of the Residence's automated external defibrillation activity; and

4. Development of policies and procedures consistent with current medical practice regarding the use of automated external defibrillators.

(f) All employees of the Residence shall know the names and be able to readily obtain the contact information of the current Executive Director and Resident Care Director of the Residence at all times.

(4) Staffing Levels.

(a) Each Residence must develop and implement a process for determining its staffing levels. The plan must include an assessment, to be conducted at least quarterly but more frequently if the Residence so chooses, of the appropriateness of staffing levels.

12.06: continued

(b) The Residence shall have sufficient staffing at all times to meet the scheduled and reasonably foreseeable unscheduled Resident needs as required by the Residents' assessments and Service Plans on a 24-hour per day basis. The Residence's staffing shall be sufficient to respond promptly and effectively to individual Resident emergencies. The Residence's staff is required to be awake at all times while on duty. The Residence shall have a plan to secure staffing necessary to respond to emergency, life safety and disaster situations affecting Residents.

(c) If the Residence accepts Residents who require the use of a Lift Device, the Residence shall have sufficient staffing at all times to meet the needs of these Residents in accordance with the Residence's Lift Device policy. The Residence must follow the manufacturer's guidance in determining the number of staff required to safely use and operate Lift Devices.

(d) If a Residence uses a third-party vendor for staffing, the Residence shall have an employee of the Residence who is trained on the Residence's policies and procedures working on the premises at all times or the third-party vendor must have completed the Residence's general training and orientation.

(e) The Residence is responsible for ensuring all staff and third-party vendors are following the Residence's policies and procedures.

(f) If a public health emergency is declared, EOAI may issue directions and guidance related to staffing on how to address the public health emergency.

(5) Special Care Residence Staffing.

(a) A Special Care Residence shall have sufficient staff qualified by training and experience awake and on duty at all times to meet the 24-hour per day scheduled and reasonably foreseeable unscheduled needs of all Residents of a Special Care Residence based upon the Resident assessments and Service Plans. A Special Care Residence's staffing shall be sufficient to respond promptly and effectively to individual Resident emergencies.

(b) For the purposes of 651 CMR 12.06(5)(a), it shall never be considered sufficient to have fewer than two staff members in a Special Care Residence.

(c) Staffing Exemption:

1. At their sole discretion, the Secretary may grant an exemption from the requirement set forth in 651 CMR 12.06(5)(b) and allow one staff member and one Floater to be on duty during an overnight shift if it is determined that:
   a. the physical design of the Special Care Residence is conducive to the provision of sufficient care to all Residents;
   b. staff members possess the means to conduct immediate communication with each another;
   c. the waiver request is not based on a fluctuation in Residence occupancy; and
   d. the safety and welfare of Residents are not compromised.
2. The Applicant/Sponsor shall request such an exemption in writing and shall enclose supporting documentation. The Secretary may grant such an exemption at their sole discretion. The Secretary's granting of the staffing exemption in a Special Care Residence shall expire on the stated expiration date of the Certification. The Applicant/Sponsor must reapply for the staffing exemption at least 30 days before the stated expiration date of the Certification. The Secretary may, at any time, revoke such an exemption. The decision to revoke the exemption is final.

(6) Staffing for Basic Health Services.

(a) Basic Health Services must be provided by a Clinical Professional capable of providing such services within their scope of practice.

(b) The Residence shall designate a qualified member of staff to:

1. ensure compliance with the Basic Health Services operating plan and relevant policies, procedures, and other applicable regulations;
2. monitor the provision of Basic Health Services to Residents;
3. obtain and update Medical Orders as necessary;
4. ensure complete and accurate records are kept in accordance with the requirements of 651 CMR 12.00 and other applicable regulations;
5. assign duties and communicate with Personal Care Staff as needed;
6. review quality control and assurance practices concerning the provision of Basic Health Services at the Residence;

12.06: continued

7. track and evaluate the performance of those providing Basic Health Services; and
8. ensure Resident Service Plans are updated as soon as necessary.

(c) The Residence must ensure sufficient staffing levels to provide the Basic Health Services required by Residents in a safe and effective manner.

(d) The Residence shall have a licensed nurse working on the Residence's premises for at least 16 hours during the day (*e.g.*, 7:00 A.M. through 11:00 P.M.) each day.

(e) The Residence must provide staff access to a licensed practical nurse or registered nurse who has knowledge of the Residents' clinical needs for consultation at all times related to the administration of Basic Health Services and to ensure patient safety and clinical competence in the application of Basic Health Services. The consultative nurse shall not be required to be physically present on the premises but must have the ability to virtually assess the Resident. The Residence and nurse must have adequate technology, including video conferencing and monitoring capabilities (*e.g.*, visual assessment of vital signs such as oxygen saturation levels), so that the nurse can obtain the clinical information necessary to make informed decisions, provide timely interventions, and help reduce unnecessary emergency room visits.

(f) The Residence shall have a plan to secure staffing necessary to ensure the continuation of Basic Health Services as required by a Resident's Service Plan, and in response to emergency, safety, and disaster situations affecting Residents.

(g) All Clinical Professionals employed by Residences certified to provide Basic Health Services to Residents must be Basic Life Support (BLS) certified.

(7) Emergency Situations. The Residence shall have a plan to secure staffing necessary to respond to emergency, safety and disaster situations affecting Residents.

(8) Special Care Residence Manager. A Special Care Residence must designate an individual who will be responsible for all Special Care operations. The Manager of a Special Care Residence shall be at least 21 years old, must have a minimum of two years' experience working with older adults or individuals with disabilities, knowledge of aging and disability issues, demonstrated experience in administration, and demonstrated supervisory and management skills. The Special Care Residence Manager must also have a Bachelor's degree or equivalent experience in human services management, housing management or nursing home management. The Special Care Residence Manager must be of good moral character and must never have been convicted of a felony.

(9) Contagious Disease and Vaccination Requirements.

(a) No person shall be permitted to work in a Residence if infected with a contagious disease in a communicable form that could endanger the health of residents or other employees. The Residence shall maintain accurate records of illnesses and associated incidents involving staff as part of its Communicable Disease Control Plan pursuant to 651 CMR 12.04(13).

(b) Consistent with any guidelines, schedules, and reporting requirements established by the Secretary, each Residence shall ensure that all personnel comply with the vaccination requirements of 651 CMR 12.06.

(c) For the purposes of 651 CMR 12.06, "personnel" means an individual or individuals who either work at or come to the Residence and who are employed by or affiliated with the Residence, whether directly, by contract with another entity, or as an independent contractor, paid or unpaid including, but not limited to, employees, members of the medical staff, contract employees or staff, students, and volunteers, whether or not such individual(s) provide direct care.

(d) For the purposes of 651 CMR 12.06, "mitigation measures" mean measures that personnel who are exempt from vaccination in accordance with 651 CMR 12.06(9)(g) must take to prevent viral infection and transmission.

(e) Influenza Vaccine.

1. Subject to the provisions of 651 CMR 12.06(9)(g), each Residence shall ensure that all personnel are vaccinated annually with seasonal influenza vaccine, inactivated or live, or an attenuated influenza vaccine, including a seasonal influenza vaccine.
2. Each Residence shall provide all personnel with information about the risks and benefits of influenza vaccine.

12.06: continued

3. Each Residence shall notify all personnel of the influenza vaccination requirements of this section and provide guidance to personnel regarding how to receive influenza vaccination.

(f) Coronavirus Disease 2019 (COVID-19) Vaccine.

1. For the purposes of 651 CMR 12.06, "COVID-19 vaccination" means being up to date with COVID-19 vaccines as recommended by the Centers for Disease Control and Prevention (CDC).

2. Subject to the provisions of 651 CMR 12.06(9)(g), each Residence shall ensure all personnel have received the COVID-19 vaccination.

3. Each Residence shall provide all personnel with information about the risks and benefits of COVID-19 vaccination.

4. Each Residence shall notify all personnel of the COVID-19 vaccination requirements of 651 CMR 12.06(9) and provide guidance to personnel regarding how to receive COVID-19 vaccination.

(g) Exemptions.

1. A Residence shall not require personnel to receive a vaccine pursuant to 651 CMR 12.06(9)(e) or (f) if the individual declines the vaccine.

2. An individual who is exempt from vaccination shall sign a statement certifying that they are exempt from vaccination and they received information about the risks and benefits of influenza vaccination and COVID-19 vaccination.

3. For any individual subject to the exemption, the Residence shall require such individual to take mitigation measures, consistent with guidance from EOAI.

(h) Documentation. A Residence shall require, and maintain for all personnel, proof of current vaccination pursuant to 651 CMR 12.06(9)(e) and (f), or the personnel's exemption statement as required by 651 CMR 12.06(9)(g). Such information shall be made available by the Residence for review by EOAI during a Compliance Review pursuant to 651 CMR 12.09.

(i) Each Residence shall ensure all personnel are vaccinated against other novel pandemic or novel influenza virus(es) in accordance with guidelines issued by the Commissioner of the Department of Public Health.

(j) Nothing in 651 CMR 12.00 shall be read to prohibit facilities from establishing policies and procedures for influenza and COVID-19 vaccination of personnel that exceed the requirements set forth in 651 CMR 12.06(9).

12.07: Training Requirements

The purposes of the requirements of 651 CMR 12.07 are to ensure employees of Assisted Living Residences have a clear understanding of their jobs and the way in which their work intersects with and supports the work of other employees, of the policies and procedures of the Residence, of the rights of the Residents, and of the particular and distinctive service needs and health concerns of the Residents. All curricula for training should reflect current standards of practice and care, be designed to enhance the professionalism of the employees, and to enable employees to provide good service. Training requirements may be satisfied by such means as practical demonstration, lectures, lectures with accompanying role playing, video with facilitated discussion, and other generally accepted techniques. No more than two of the seven hours required for orientation may be conducted by un-facilitated media presentations by such means as video or audio. Instructors and facilitators shall be appropriately qualified by training or demonstrated experience. The Residence shall maintain documentation in the employee's personnel file regarding the completion of training or eligibility for any exemption.

(1) General Orientation. Prior to active employment, all staff and contracted providers who will have direct contact with Residents and all food service personnel must receive a seven-hour orientation which includes the following topics:

(a) Philosophy of independent living in an Assisted Living Residence;
(b) Resident Bill of Rights;
(c) Elder Abuse, Neglect and Financial Exploitation;
(d) Residence policies and procedures related to disaster and emergency preparedness;
(e) Communicable diseases, including but not limited to, AIDS/HIV and Hepatitis B;

12.07: continued

(f) Infection control in the Residence and the principles of universal precautions based on DPH guidelines;
(g) Communication Skills;
(h) Review of the aging process;
(i) Dementia/Cognitive Impairment including a basic overview of the disease process, communication skills and behavioral interventions;
(j) Resident health and related problems;
(k) General overview of the employee's specific job requirements;
(l) The Residence's policy on emergency response to acute health issues, and first aid;
(m) Sanitation and Food Safety;
(n) The policies concerning smoking on the Residence's premises;
(o) The proper use, administration, and maintenance of oxygen, including safety protocols; and
(p) the disaster and emergency preparedness plan required in 651 CMR 12.04(12)(a).

(2) Additional General Orientation Requirements.
(a) At least one hour of general orientation training shall be devoted to the topic of elder abuse, neglect, and financial exploitation.
(b) At least two hours of general orientation training shall be devoted to the topic of dementia and cognitive impairments. All curricula for training related to dementia shall reflect current standards of practice and care.
(c) In addition to the requirements relative to the general orientation set forth in 651 CMR 12.07(1)(a) through (p), all personnel providing Personal Care Services shall receive at least one additional hour of orientation devoted to the topic of Self-administered Medication Management provided by a nurse.
(d) Both the Executive Director and Resident Care Director shall receive an additional two-hour training devoted to dementia care topics.
(e) A Residence may include the use of techniques such as the shadowing of more experienced employees during the first five days of an employee's tenure.

(3) Orientation for Staff Working within Special Care Residences. In addition to completing requirements for general orientation as set forth under 651 CMR 12.07(1)(a) through (p), all new employees who work within a Special Care Residence and have direct contact with Residents must receive seven hours of additional training on topics related to the specialized care needs of the Resident population (*e.g.*, communication skills, creating a therapeutic environment, interpreting manifestations of distress, decisional capacity, sexuality, family issues, and caregiver support).

(4) Training for Employees Supporting Basic Health Services.
(a) Prior to providing Basic Health Services to Residents, all Clinical Professionals employed by Residences certified to provide Basic Health Services to Residents must receive a minimum of two hours of training designed to ensure employee understanding and competency with the provision of Basic Health Services to Residents, including the Residence's Basic Health Services operating plan, policies and procedures concerning Basic Health Services, and the requirements of 651 CMR 12.00.
(b) On an ongoing basis, all Personal Care Staff employed by Residences certified to provide Basic Health Services must receive two hours of training every 12 months. The training must be designed to ensure that the Personal Care Staff understand the Basic Health Services provided, understand the Residence's policies and procedures concerning Basic Health Services, understand how to provide Resident care in coordination with Basic Health Services, and how to report changes in a Resident's condition to a licensed nurse or other Clinical Professional.
(c) All completed trainings must be documented and maintained in the employee's personnel file.

12.07: continued

(5) Ongoing In-Service Education and Training.

(a) A minimum of ten hours per year of ongoing education and training is required for all employees, with at least two hours on the specialized needs of Residents with Alzheimer's disease and related dementia. The curriculum used for the ongoing education and training shall cover the following topics: Alzheimer's disease and dementia; person-centered care; assessment and care planning; activities of daily living; and dementia-related behaviors and communication. The ongoing education and training must also include the policies concerning smoking on the Residence's premises, the proper use, maintenance and safety protocols concerning oxygen, and the disaster and emergency preparedness plan required pursuant to 651 CMR 12.04(12)(a).

(b) All Personal Care Staff and Clinical Professionals must receive training on:

1. The proper installation, use, and maintenance of Transfer Assistive Devices or Mobility Assistive Devices;

2. How to instruct Residents on the safe use of Transfer Assistive Devices or Mobility Assistive Devices;

3. The difference between Transfer Assistive Devices and prohibited Restraints;

4. Recognizing and reporting potential safety hazards related to Transfer Assistive Device or Mobility Assistive Device use; and

5. Monitoring Residents for changes in condition that may affect the safe use of the Transfer Assistive Device or Mobility Assistive Device.

(c) All Personal Care Staff and all Clinical Professionals must complete an initial training regarding the Lift Device program, if applicable. The Lift Device training shall also be completed by Personal Care Staff and Clinical Professionals annually, if applicable. The completion of the initial and annual Lift Device trainings shall be documented in the employee's personnel file. The Lift Device program is required to ensure Personal Care Staff and Clinical Professionals understand the proper use and operation of Lift Devices. The training shall include the correct use and understanding of safe Resident movement. The training must include a lift program guide, pertinent instruction materials from lift equipment manufacturers, and also include a practice evaluation.

(d) Employees working in a Special Care Residence must receive an additional four hours of training per year related to the Residents' specialized needs. Such training shall include the development of communications skills for Residents with dementia.

(e) In addition to the general ten-hour continuing education requirement for all employees, Executive Directors shall complete an additional five hours of training which shall be intended to complement the individual's background and experience. Credits for completing annual continuing education requirements for Executive Directors may be transferable to other Residences.

(f) No more than 50% of the ongoing training requirement may be conducted by unfacilitated media presentations by such means as video or audio.

(g) Upon submitting proof in a manner and form prescribed by EOAI, training received within the past 18 months at another Assisted Living Residence, a similar facility or agency may be used to satisfy the requirements of 651 CMR 12.07. Satisfaction of the requirements of the general orientation shall not be used to fulfill the requirements of 651 CMR 12.04(5).

(h) Specialized Training Requirements.

1. All Personal Care Staff shall be trained in the Residence's policy on emergency response to acute health issues and first aid, and must also complete at least one hour of ongoing education and training per year on the topic of Self-administered Medication Management; and

2. All employees and providers shall receive ongoing in-service education and training, provided by a professional with relevant experience, that is designed to ensure orientation training is reinforced, from among the following topics:

a. Behavioral interventions, including prevention of manifestations of distress such as aggressive behavior and de-escalation techniques (mandatory);

b. Defining, recognizing and reporting elder abuse (mandatory);

c. Communication and teamwork;

d. The aging process, including typical changes and those related to disease;

e. The causes and prevention of falls and related injuries, and the Residence's established policies and procedures for an Evidence Informed Falls Prevention Program;

12.07: continued

f. The effects of dehydration;
g. Alzheimer's disease and cognitive impairments;
h. Conflict resolution;
i. Resident rights;
j. Self-administered Medication Management;
k. Death and dying;
l. Maintaining skin integrity;
m. Nutrition;
n. Emergency procedures; and
o. Training which addresses topics required in the general orientation.

(6) Each residence shall conduct an annual training needs assessment to prepare the curriculum for its required training and establish a process by which it will evaluate the efficacy of its training program.

(7) Personal Care Services Provider Training Requirements. Assisted Living Residence Personal Care Staff and contracted providers of Personal Care Services must complete an additional 54 hours of training prior to providing Personal Care Services to a Resident, 20 hours of which must be specific to the provision of Personal Care Services. The 20 hours of Personal Care training must be conducted by a qualified Registered Nurse with a valid Massachusetts license.

(a) The 54 hours of training must include the following topics:
1. Bathing and personal care;
2. The effects of dehydration;
3. Maintaining skin integrity;
4. Self-administered Medication Management;
5. Elimination;
6. Nutrition;
7. Human Growth, Development and Aging;
8. Family Dynamics;
9. Grief, Loss, Death and Dying;
10. Mobility;
11. Fall prevention;
12. Mental health, depression and loneliness;
13. Maintenance of a Clean, Safe and Healthy Environment;
14. Home Safety; and
15. Assistance with Appliances.

(b) Documentation of completion of the 54-hour training for Assisted Living Residence Personal Care Staff and contract providers who provide Personal Care Services shall be transferable for each employee from one Residence to another.

(8) Introductory Visit and Review. Prior to or within 48 hours after the provision of Personal Care Services to a Resident, a licensed nurse shall review the Resident's Service Plan with all relevant Personal Care Staff. This review may be conducted in the Resident's Unit or at another appropriate location within the Residence, as determined by the nurse. The Personal Care Staff must demonstrate competence in the assigned personal care tasks (including Self-administered Medication Management) in the Resident's Service Plan. Such competence may be demonstrated either through a verbal review of these tasks or, if deemed necessary by the licensed nurse, by the demonstrated performance of the tasks by such workers. An Introductory Visit shall also be conducted and documented in the Resident's record whenever the Resident's personal care needs change significantly, as determined by the nurse. Such documentation shall be kept current.

(9) Supervision. A qualified nurse shall, at least once every six months, evaluate the Personal Care Services provided by Personal Care Staff of the Residence or by contracted providers. A written record of the staff or provider's performance of personal care skills shall be completed after each evaluation and shall be kept in the employee's personnel file. Personal Care Staff who provide Self-administered Medication Management shall also be evaluated on their awareness of and compliance with SAMM regulations and the applicable Residence policies and procedures.

12.07: continued

(10) Exemptions. The following individuals are exempt from Personal Care Services Provider Training Requirements as set forth in 651 CMR 12.07(7). However, these individuals must complete the general orientation and Ongoing In-service Education and Training as set forth in 651 CMR 12.07(1) through (3) and 651 CMR 12.07(5).

(a) Registered Nurse (RN) and a Licensed Practical Nurse (LPN) with a valid license in Massachusetts;

(b) Nurse's Aides with documentation of successful completion of nurse's aide training;

(c) Home Health Aides with documentation of having successfully completed the Certified Health Aide training program; and

(d) Personal Care Homemakers with documentation of having successfully completed a Personal Care Homemaker training program (54 Hours).

(11) Food Service Personnel. Before commencing employment in an Assisted Living Residence, the person(s) managing the dietary department (*e.g.* food services manager and chef) must complete a food service sanitation course which meets the applicable requirements of 105 CMR 590.003: *Food*.

12.08: Resident Rights and Required Disclosures

Prior to scheduling a formal meeting with a prospective Resident, the Residence shall inform him or her of the right to be accompanied by a Legal Representative, Resident Representative, or other advisor. During its first formal meeting with a prospective Resident, the Residence shall deliver to and verbally review with the prospective Resident a consumer guide developed by EOAI and the Disclosure of Rights and Services required by 651 CMR 12.08(3), which incorporates the provisions of 651 CMR 12.08(1). At the time of or prior to the execution of the Residency Agreement or the transfer of any money to a Sponsor by or on behalf of a prospective Resident, whichever first shall occur, the Sponsor shall deliver to and verbally review with the prospective Resident, the person with whom the contract is entered into, and, if applicable, the prospective Resident's Legal Representative a copy of the Residency Agreement, which shall state all applicable costs and terms of payment, services offered and not offered, shared risks, and all other important terms and conditions of the Agreement. All documents shall be written in plain language and published in typeface no smaller than 14-point type. EOAI may require that any applicable disclosure statement be in the form and format as required by EOAI.

(1) Resident Rights. Every Resident of an Assisted Living Residence shall have the right to:

(a) Live in a decent, safe, and habitable residential living environment;

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy;

(c) Privacy within the Resident's Unit subject to rules of the Assisted Living Residence reasonably designed to promote the health, safety and welfare of Residents;

(d) Retain and use their own personal property, space permitting, in the Resident's living area so as to maintain individuality and personal dignity;

(e) Private communications, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of her or his choice;

(f) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community;

(g) Directly engage or contract with licensed or certified health care providers to obtain necessary health care services in the Resident's Unit or in such other space in the Assisted Living Residence as may be available to Residents to the same extent available to persons residing in their own homes, and with other necessary care and service providers, including, but not limited to, the pharmacy of the Resident's choice subject to reasonable requirements of the Residence. The Resident may select a medication packaging system within reasonable limits set by the Assisted Living Residence. Any Assisted Living Residence policy statement that sets limits on medication packaging systems must first be approved by EOAI;

(h) Manage their own financial affairs, unless the Resident has a Legal Guardian or other court-appointed representative with the authority to manage the Resident's financial affairs;

(i) Exercise civil and religious liberties;

12.08: continued

(j) Present grievances and recommended changes in policies, procedures, and services to the Sponsor, Executive Director or staff of the Assisted Living Residence, government officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to representatives of the Statewide Long-Term Care Ombudsman program established under M.G.L. c. 6A, § 16CC, the Elder Protective Services program established under M.G.L. c. 19A, §§ 14 through 26, and the Disabled Persons Protection Commission (DPPC) established under M.G.L. c. 19C;

(k) Upon request, obtain from the Assisted Living Residence, the name and contact information of the Executive Director, Resident Care Director, and any other persons responsible for their care or the coordination of their care;

(l) Confidentiality of all records and communications to the extent provided by law;

(m) Have all reasonable requests responded to promptly and adequately within the capacity of the Assisted Living Residence;

(n) Upon request, obtain an explanation of the relationship, if any, of the Residence to any health care facility or educational institution to the extent the relationship relates to their care or treatment;

(o) Obtain from a person designated by the Residence a copy of any rules or regulations of the Residence which apply to their conduct as a Resident;

(p) Privacy during medical treatment or other rendering of services within the capacity of the Assisted Living Residence;

(q) Informed consent to the extent provided by law;

(r) Not be evicted from the Assisted Living Residence except in accordance with the provisions of landlord/tenant law as established by M.G.L. c. 186 or M.G.L. c. 239 including, but not limited to, an eviction notice and utilization of such court proceedings as are required by law;

(s) Be free from Restraints;

(t) Receive an itemized bill for fees, charges, expenses and other assessments for the provision of Resident services, Personal Care Services, and optional services;

(u) Have a written notice of the Residents' Rights published in typeface no smaller than 14-point type posted in a prominent place or places in the Assisted Living Residence where it can be easily seen by all Residents. This notice shall include the address, and telephone number of the Long-Term Care Ombudsman Program, and the telephone number of the Elder Abuse Hotline;

(v) Be informed in writing by the Sponsor of the Assisted Living Residence of the community resources available to assist the Resident in the event of an eviction procedure against him or her. Such information shall include the name, address and telephone number of the Long-Term Care Ombudsman Program.

(w) To organize and participate in self-governed, confidential Resident groups in the Residence;

(x) To participate in self-governed, confidential family groups; and

(y) Have family member(s) or other Resident Representatives meet in the Residence with the families or Resident Representative(s) of other Residents in the Residence.

(z) Be able to review a copy of the Residence's disaster and emergency preparedness plan at any time.

(2) Residency Agreement.

(a) The Residency Agreement shall include, at a minimum, the following:

1. Charges, expenses and other assessments for the provision of Resident services, Personal Care Services, Lodging and meals, and optional services;
2. All fees associated with the provision of Basic Health Services, if applicable;
3. The agreement of the Resident to make payment of the charges specified;
4. The policy and procedures regarding a Resident's financial liability or other expectation for payment of services during Resident absences from the Residence;
5. Arrangements for payment;
6. A Resident grievance procedure which meets the requirements of 651 CMR 12.08(1)(j);
7. The Sponsor's covenant to comply with applicable federal and state laws and regulations concerning consumer protection and protection from abuse, neglect and financial exploitation of the elderly and disabled;

12.08: continued

8. The conditions under which the Residency Agreement may be terminated by either party, including criteria the Residence may use to determine whether the conditions have been met, and the length of the required notice period for termination of the Residency Agreement;
9. Reasonable rules for the conduct and behavior of staff, management and the Resident;
10. The Resident's rights required by 651 CMR 12.08(1);
11. A clear explanation of the services included in any fees, a description and itemization of all other bundled services as well as an explanation of other services available at an additional charge;
12. An explanation of any limitations on the services the Residence will provide, specifically including any limitations on services to address specific Activities of Daily Living and behavioral management. Such explanation shall also include a description of the role of the nurse(s) employed by the Residence, and the nursing and personal care worker staffing levels;
13. An explanation of the eligibility requirements for any available subsidy programs, including a statement of any costs associated with services beyond the scope of the subsidy program for which the Resident or their Legal Representative would be responsible;
14. The refund policies for all Administrative Fees, deposits, and other charges; and
15. A copy of the Residence's medication management policy: its Self-administered Medication Management (SAMM) policy, including its policy on assistance with as-necessary or PRN medication when part of the SAMM plan; and, if applicable, Limited Medication Administration.

(b) If the Disclosure of Rights and Services required by 651 CMR 12.08(3) fully states all of the items required by 651 CMR 12.08(2)(a)6., 9., 10., 12., 13. and 15., the Residency Agreement may incorporate those requirements by reference.

(c) The Residency Agreement may include the agreement of the Sponsor to provide or arrange for the provision of additional services, including, but not limited to, the following:
1. Barber and beauty services, sundries for personal consumption, and other amenities; and
2. Local transportation for medical and recreational purposes.

(d) The Residency Agreement shall be for a term not to exceed one year and may be renewable upon the agreement of both parties.

(e) The Residency Agreement shall be for a single or double living Unit in the Residence with lockable entry doors on each Unit which meet the bathroom, Bathing Facility and kitchenette requirements of 651 CMR 12.04(1).

(f) A Residency Agreement for a Residence receiving funding through MassDevelopment pursuant to M.G.L. c. 23A, which otherwise meets the requirements of 651 CMR 12.08(2), may be executed for an initial period not to exceed 13 months.

(g) A Resident may voluntarily agree to vacate their Unit in accordance with their Residency Agreement. A Resident may not be evicted from the Resident's Unit following termination of the Residency Agreement except in accordance with the provisions of landlord/tenant law as set forth in M.G.L. c. 186 and M.G.L. c. 239.

(3) Disclosure of Rights and Services. The disclosure statement shall include, at a minimum, the following:

(a) The number and type of Units the Residence is certified to operate;

(b) The number of staff currently employed by the Residence, by shift, an explanation of how the Residence determines staffing, and the availability of overnight staff, and shall provide this information separately for any Special Care Residence within the Residence;

(c) A copy of the list of Residents' Rights set forth in 651 CMR 12.08(1);

(d) An explanation of the eligibility requirements for any subsidy programs including a statement of any additional costs associated with services beyond the scope of the subsidy program for which the Resident or their Legal Representative would be responsible. This explanation should also state the number of available Units, and whether those Units are shared;

(e) A copy of the Residence's medication management policy, its Self-administered Medication Management policy for dealing with medication that is prescribed to be taken "as necessary", and an explanation of its Limited Medication Administration policy;

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(f) An explanation of any limitations on the services the Residence will provide, including, but not limited to, any limitations on specific services to address Activities of Daily Living and any limitations on behavioral management;
(g) An explanation of the role of the nurse(s) employed by the Residence;
(h) An explanation of entry criteria and the process used for Resident assessment;
(i) A statement on the number of staff who are qualified to administer cardiopulmonary resuscitation (CPR) and use an Automated External Defibrillator (AED), and the Residence's policy on the circumstances in which CPR will be administered and when an AED will be used;
(j) An explanation of the conditions under which the Residency Agreement may be terminated by either party, including the criteria the Residence may use to determine whether conditions have been met, and the length of the required notice period for termination of the Residency Agreement;
(k) An explanation of the physical design features of the Residence including that of any Special Care Residence;
(l) An illustrative sample of the Residence's Service Plan, an explanation of its use, the frequency of review and revisions, and the signatures required;
(m) An explanation of the different or special types of diets available;
(n) A list of enrichment activities, including the minimum number of hours provided each day;
(o) An explanation of the security policy of the Residence, including the procedure for admitting guests;
(p) A copy of the instructions to Residents in the Residence's disaster and emergency preparedness plan;
(q) A statement of the Residence's policy and procedures, if any, on the circumstances under which it will, with the member's permission, include family members in meetings and planning;
(r) Each Residence that provides special care shall provide a written statement describing its special care philosophy and mission, and explaining how it implements this philosophy and achieves the stated mission.
(s) If a Residence allows non-Residents to use any of its facilities, such as a swimming pool, gymnasium or other meeting or function room, it shall disclose the fact of such usage to its Residents. Said disclosure shall:
1. inform the Residents of the existence of non-regulated programming on-site;
2. disclose the amount of interaction or shared use of the facilities; and
3. describe any resultant impact on Residence staffing.
(t) The policy for a Resident's financial liability or other expectation for payment of services during Resident absences from the Residence;
(u) A statement regarding the procedures that will take place during an emergency and an evacuation;
(v) The policies and procedures concerning smoking on the Residence's premises; and
(w) The policies and procedures regarding the proper use, administration, and maintenance of oxygen, including safety protocols.

(4) Additional Disclosures. EOAI may develop specific documents that must be included with the Residency Agreement and disclosed to both current and prospective Residents. EOAI may require Residences to submit such documents to EOAI regularly or upon any change. EOAI may make these documents public. EOAI may require that the Residence post these documents on the Residence's website in the form and format as prescribed by EOAI. Each Resident or Legal Representative executing the Residency Agreement must also sign any required documents in the presence of a witness.

(5) Disclosures regarding Basic Health Services. A Residence providing Basic Health Services must create a written disclosure containing information pertaining to all Basic Health Services offered to current and prospective Residents.
(a) Such written disclosure must include, but is not necessarily limited to, the following:
1. the Residence's philosophy and mission regarding how Basic Health Services are provided;

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2. the processes employed to ensure continuity of services for when a Resident leaves the Residence such as during a leave of absence (for medical or personal reasons), or the termination of the residency;
3. the processes used for assessment, service planning, and implementation of Basic Health Services for Residents;
4. the roles of family and others who provide support to the Resident receiving Basic Health Services;
5. program costs, including options should a Resident no longer be able to afford Basic Health Services;
6. a statement informing the Resident of any limitations regarding the provision of Basic Health Services; and
7. any additional information EOAI may require.

(b) The disclosure must be provided to EOAI and distributed to all Residents, Legal Representatives, or Resident Representatives, if applicable, the Long-Term Care Ombudsman, and the Residents' Health Care Agents, if applicable.

(c) Any changes to the Residence's disclosure statement must be provided in advance to EOAI, and subsequently provided to all Residents, Legal Representatives, or Resident Representatives, if applicable, the Long-Term Care Ombudsman, and the Residents' Health Care Agents, if applicable.

12.09: Compliance Reviews and Findings of Noncompliance of Assisted Living Residences

(1) Purpose. EOAI or its authorized designee shall conduct a compliance review of an Assisted Living Residence prior to the issuance of any initial or renewal Certification to determine compliance with M.G.L. c. 19D and 651 CMR 12.00. An authorized designee shall not be a Sponsor of an Assisted Living Residence.

(2) Frequency. EOAI or its authorized designee shall conduct compliance reviews of Assisted Living Residences prior to initial certification, no less than once every two years at Residences' biennial certification in accordance with 651 CMR 12.09(3)(a) and no less than once every year for Residences certified to provide Basic Health Services in accordance with 651 CMR 12.09(3)(b). In addition, EOAI may conduct a compliance review any time it has cause to believe that an Assisted Living Residence is in violation of an applicable section of M.G.L. c. 19D or any applicable EOAI regulation, in accordance with 651 CMR 12.09(3)(c).

(3) Compliance Reviews and Findings of Noncompliance.

(a) Initial and Biennial Certification Compliance Review. A compliance review conducted as part of an initial or biennial certification shall include, at a minimum, the following:

1. A review of the operating plan and an inspection of every part of the common areas of the Assisted Living Residence. The inspector may, in their discretion, interview the Applicant or Sponsor, Executive Director, staff and Residents of the Assisted Living Residence. An inspector shall have the authority to confidentially and privately interview the Applicant or Sponsor, Executive Director, staff, and Residents. Interviews with Residents shall be conducted privately and shall be confidential;
2. An inspection of the living quarters of any Resident, but only with the Resident's prior consent;
3. An examination of any and all documents within a Resident's record, including Service Plans and written progress reports, incident reports (or similar documents), Residency Agreement, and any other financial or contractual agreements specific to the Resident. The Resident may give consent in writing, on a form developed by EOAI, orally, or by a sign of affirmation if the Resident is not able to give consent by other means. Consent may include consent to photocopy such materials. If consent is obtained by a means other than writing, confirmation of the consent shall be written in the review record;
4. A review of staff and contracted provider records, including personnel files;

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5. Reviews of Residences certified to provide Basic Health Services shall also include an inspection of records associated with the provision of Basic Health Services, a review of Residence employee qualifications, the Residence's operating plan as it pertains to the provision of Basic Health Services, and the documentation created and maintained by the Residence for Residents who received Basic Health Services during the previous 12-month period;

6. A review of all other books, records, and other documents maintained in relation to the operations of the Residence; and

7. A review of the quality improvement and assurance plans, including Resident satisfaction surveys.

(b) Annual Compliance Review for Basic Health Services. A compliance review of a Residence certified to provide Basic Health Services will be conducted annually on the years that the compliance review for biennial recertification in accordance with 651 CMR 12.09(3)(a) is not conducted. Such compliance review for Basic Health Services will include review of the compliance for the provision of Basic Health Services and related requirements pursuant to 651 CMR 12.09(3)(a)5., and may include a review of a portion or subset of additional items described at 651 CMR 12.09(3)(a), or such other items determined to be relevant to such annual compliance review for Basic Health Services in EOAI's sole authority.

(c) Interim Compliance Review. EOAI may conduct compliance reviews other than those described at 651 CMR 12.09(3)(a) and 12.09(3)(b) at the discretion of EOAI at such other times EOAI has cause to believe that a Residence is in violation of an applicable section of M.G.L. c. 19D or 651 CMR 12.00. The interim compliance review may include a review of a portion or subset of the items described at 651 CMR 12.09(3)(a), or such other items determined to be relevant to such interim compliance review in EOAI's sole authority.

(d) Findings of Noncompliance. EOAI may make findings of noncompliance with M.G.L. c. 19D or 651 CMR 12.00 as a result of conducting a compliance review or when EOAI has cause to determine a Residence fails to meet the requirements of M.G.L. c. 19D or 651 CMR 12.00.

(e) Refusal to grant EOAI timely access to Residents, staff, all books, records, and other documents maintained regarding the operations of the Residence shall constitute valid basis to modify, suspend, revoke or deny an application for an initial or renewal Certification, or issue a fine of not more than $500 for each day of such failure or refusal to comply. EOAI shall be authorized to photocopy such materials or request the Residence send copies of identified materials to EOAI *via* facsimile or other electronic means.

(4) Compliance Review Reports, Findings of Noncompliance, Actions by EOAI, and Responses. Whenever a compliance review is conducted, or where EOAI otherwise makes determinations of findings of noncompliance with the requirements of 651 CMR 12.00, EOAI or its designee shall prepare written findings summarizing all pertinent information obtained during such compliance review or such other determination of findings and shall not disclose confidential or privileged information obtained in connection with the review or determination of findings.

(a) Notice of Compliance. If EOAI finds that the Applicant or Sponsor is in compliance with M.G.L. c. 19D or 651 CMR 12.00, EOAI shall mail a copy of its findings to the Applicant or Sponsor within ten days after the compliance review is completed.

(b) Notice of Noncompliance. If EOAI finds that the Applicant or Sponsor is not in compliance with M.G.L. c. 19D or 651 CMR 12.00, EOAI shall forward a notice of noncompliance to the Applicant or Sponsor. The notice shall describe the noncompliance with particularity, indicate the specific portion of the law(s) or regulation(s) which have been violated, and shall include the corrective action to be taken by the Applicant or Sponsor within a time period deemed reasonable by the Secretary. The notice of noncompliance also shall include a description of the action that may be taken by the Secretary if the corrective action is not completed. The notice shall be delivered by hand or by certified mail, return receipt requested, or by first-class mail postage prepaid, and by email, within ten days after completion of the review of the Assisted Living Residence.

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(c) Corrective Action. Whenever EOAI finds, upon inspection or through information in its possession, that a Residence is not in compliance with any law(s), regulation(s), governing such program, EOAI may, in its discretion, require the Residence to implement any corrective action it deems necessary, including:

1. Ceasing the enrollment of new Residents;
2. Reducing the number of Residents served;
3. Changing the staffing patterns or staffing levels, or staffing qualifications; or
4. Requiring additional training of the Executive Director or staff.
5. Factors which may be considered by EOAI in determining the nature of the corrective action to be imposed include, but are not limited to:
   a. Any instances of noncompliance at the Residence;
   b. The risk that the instances of noncompliance present to the health, safety, and welfare of residents;
   c. The nature, scope, severity, degree, number, and frequency of the instances of noncompliance;
   d. The Applicant or Sponsor's failure to correct the noncompliance;
   e. Any ongoing pattern of noncompliance;
   f. Any previous enforcement action(s); and
   g. The results of any past corrective action plans or orders.

(d) Modification, Suspension, Revocation or Refusal to Issue or Renew Certification. EOAI may modify, suspend, revoke, deny or refuse to issue or renew a Certification, which may solely be applicable to the Certification to provide Basic Health Services as determined by EOAI, in any case in which it finds any of the following:

1. There has been a failure or refusal to comply with any applicable law, regulation, corrective order, notice of sanction, or suspension agreement;
2. The Applicant or Sponsor submitted any misleading or false statement or report required under 651 CMR 12.00;
3. The Applicant or Sponsor refused to submit any report or make available any records required under 651 CMR 12.00;
4. The Applicant or Sponsor refused to admit, at a reasonable time, any employee of EOAI authorized by the Secretary to investigate or inspect, in accordance with 651 CMR 12.00; or
5. The Applicant or Sponsor failed to obtain Certification prior to opening a program or residence or prior to changing the location of a program or residence except as allowed in 651 CMR 12.00.

(e) Fine.

1. In General. If EOAI determines that there has been a failure or refusal to comply with the requirements of 651 CMR 12.00 or any applicable statute or other legal requirement, EOAI may issue a fine of not more than $500 for each day of each such failure or refusal to comply.
2. Basic Health Services. In accordance with M.G.L. c. 19D, §§ 10(h) and 10(i)
   a. If EOAI determines that a Residence provided or offered to provide Basic Health Services without Certification to provide Basic Health Services, EOAI may issue a fine of not more than $1,000.00 per day for each day of such provision or offering, or both.
   b. If EOAI determines an incident involving Basic Health Services results in injury to a resident, EOAI may impose a fine or otherwise take an enforcement action.

(f) Effect. An Applicant or Sponsor shall not qualify for a Certification from EOAI for five years after a final agency decision to revoke or refuse to issue or renew a Certification held by the Applicant or Sponsor. Thereafter, an Applicant or Sponsor shall be eligible only if he or she can demonstrate a significant change in circumstances. EOAI may, at its sole discretion, consider an application for Certification prior to the expiration of the five-year period, if it determines that a significant change in circumstances has occurred. Such exercise of its discretion shall not be appealable.

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(g) Emergency Action.

1. EOAI may, in its discretion, modify, suspend, revoke, or refuse to renew a Residence's Certification without prior notice if EOAI finds at the time of the review, or at any other time, that the Applicant or Sponsor is not in compliance with M.G.L. c. 19D or 651 CMR 12.00 and that such noncompliance presents an immediate threat to the health, safety, or welfare of Residents. The Applicant or Sponsor shall be notified of any such modification, suspension, or revocation of a Certification by written notice, hand delivered, or mailed to the applicant or sponsor via first class mail, certified or registered, return receipt requested.

2. Before imposing a modification, suspension, revocation, or refusing to renew a Residence's Certification, EOAI may require immediate corrective action by the Residence. In such cases, EOAI will identify the nature of the correction and the time frame in which to make those corrections. The corrective action will be directly based upon the nature of the findings, and the timeframe within which the action must be taken will be reasonable.

3. The modification, suspension, or revocation of the Certification or refusal to renew the Certification shall remain in effect pending resolution through the Administrative Review and hearing process, if applicable.

(h) Response to Notice. The Applicant or Sponsor shall respond in writing to EOAI within ten days after receiving the notice of noncompliance, and indicate its agreement or disagreement with the EOAI findings. Failure of the Applicant or Sponsor to respond within the ten-day period to the Notice of Noncompliance will be deemed to be agreement with the findings.

1. If the Applicant or Sponsor agrees with the findings, a signed, written plan of correction for each cited finding must be submitted to EOAI within a timeframe acceptable to EOAI. Each plan of correction shall include the following details:

a. Corrective Actions. A specific description of the measures that have been or will be taken to address the findings.

b. Preventative Measures. A description of the actions that will be implemented to prevent the recurrence of the findings or similar issues.

c. Responsibility. The designation of the individual(s) responsible for monitoring the implementation of the corrective actions to ensure that the findings do not recur; and.

d. Timeline. The date by which the corrections will be achieved.

2. Following the receipt of a complete corrective action plan, EOAI will review the submission and notify the Applicant or Sponsor of its acceptability.

3. If the Applicant or Sponsor disagrees with any of the EOAI findings or actions, an Administrative Review may be initiated pursuant to 651 CMR 12.10.

(i) Consultation. The Applicant or Sponsor may request a consultation with EOAI about findings of noncompliance and any action taken or to be taken by EOAI. Such request will be granted at the discretion of EOAI. A consultation may take the form of an exit conference at the conclusion of a compliance review or other format as determined by EOAI in its sole authority.

12.10: Administrative Review: Procedure

If an Applicant or Sponsor disagrees with the EOAI finding(s) or action(s), it may request an Administrative Review by submitting its request, *via* certified mail, return receipt requested, together with a detailed written rebuttal of the findings within ten days of receipt of the notice of noncompliance.

12.10: continued

(1) EOAI Review.

(a) Informal Review. An Applicant or Sponsor who disagrees with an EOAI Compliance Review finding, other finding of noncompliance, or action taken or to be taken by EOAI in accordance 651 CMR 12.09 may request an Informal Review by the Director of the Assisted Living Certification Unit. The request for Informal Review must be submitted within ten days of the issuance of the findings. The Informal Review shall be scheduled within ten days of the receipt of the request for review, and shall consist of an informal presentation of the position of the Applicant or Sponsor, and review of any applicable written documents. If the matter is settled, the agreement shall be reduced to writing. If it is not, EOAI will issue a written decision within ten days.

(b) Informal Hearing. An Applicant or Sponsor who disagrees with the decision of the Informal Review may request an Informal Hearing before the Secretary or a designee. Such request shall be delivered by hand or by certified mail, return receipt requested, and must be submitted within ten days of the issuance of the Informal Review decision. EOAI shall schedule an Informal Hearing within 15 days after receipt of the request for Informal Hearing. The Informal Hearing shall consist of an informal presentation of the position of the parties and any applicable written documents. If the matter is settled at the Informal Hearing, EOAI and the Applicant or Sponsor shall reduce the settlement to writing. If the matter is not settled at the Informal Hearing, the Secretary or a designee shall review all material presented and within 30 days after the Informal Hearing, forward a decision to the Applicant or Sponsor.

(2) Formal Hearing.

(a) Initiation of Appeal. When EOAI has denied, revoked, suspended, or modified Certification, or issued fines in accordance with 651 CMR 12.09, the Applicant or Sponsor may appeal the final decision issued after the Informal Hearing by filing a notice of claim for adjudicatory proceeding with the Division of Administrative Law Appeals pursuant to 801 CMR 1.01: *Formal Rules*, and by filing a copy of the notice with the General Counsel of EOAI. The appeal shall be filed no later than 21 days after the decision on the Informal Hearing is issued.

(b) Scope of Review. If the hearing officer designated by the Division of Administrative Law Appeals finds by substantial evidence any single ground for denial, revocation, modification, suspension or refusal to renew an Application or Certification which ground constitutes a failure or refusal to comply with the requirements of M.G.L. c. 19D or 651 CMR 12.00, the hearing officer shall uphold the decision to deny, revoke, modify, suspend or refuse to renew such Application or Certification.

(c) Decision and Action by the Secretary of EOAI. The decision of the hearing officer shall be a tentative decision under 801 CMR 1.01(11)(c): *Tentative Decisions*. Within 30 days of receipt of the decision, the Secretary shall render a final decision to approve, modify, or disapprove the hearing officer's decision. The Appellant may submit a written statement to the Secretary concerning the tentative decision within seven days after receiving it, but shall not be entitled to a further hearing before the Secretary. The decision of the Secretary shall be the final administrative decision, and shall bind the parties unless the Appellant commences an action to obtain judicial review within 30 days after the date of the final decision.

(3) Enforcement. Nothing in 651 CMR 12.10 shall limit EOAI's ability to exercise its responsibility and authority to enforce the disputed regulation, finding, or action during the Administrative Review process. All completed reports, responses, and notices of final action shall be made available to the public at the department during business hours together with the responses of the Applicants or the Sponsors and said reports, responses, and notices of final action will be posted on EOAI's website. Nothing in 651 CMR 12.10 shall limit EOAI's responsibility to periodically review the Residence to determine whether it has achieved compliance with the statutory and regulatory requirements, and, if so, to issue the Certification subject to reasonable conditions.

(4) Notification. Whenever EOAI initiates an action to deny, suspend, modify, refuse to renew or revoke a Certification pursuant to 651 CMR 12.09(4), EOAI shall transmit a notice to each Resident, or Legal Representative and appropriate governmental agencies which:

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(a) Describes the action to be taken;
(b) Suggests the general timetable for the enforcement process and its possible effect on Residents; and
(c) Confirms that a second notice will be transmitted if the relocation of the Residents is imminent.

Whenever it appears likely that a Certification denial or revocation action commenced pursuant to 651 CMR 12.09(4) will result in the need for relocation of Residents, EOAI shall transmit a second notice to each Resident, or Legal Representative and appropriate governmental agencies informing each party of:

1. The status of the enforcement action;
2. Residents' rights under the Residency Agreement; and
3. The availability of information to Residents from EOAI and other sources regarding available legal assistance and assistance in relocation.

12.11: Right of Entry by EOAI and Contracting Agencies

Any duly designated officer or employee of EOAI shall have the right to enter and inspect, at any time without prior notice, the common areas and office areas of any Assisted Living Residence for which an Application has been received or for which Certification has been issued. Any Application shall constitute permission for such entry and inspection. Inspections of any Unit shall be with the oral or written consent of the Resident.

12.12: Penalties for Uncertified Operation

(1) Any person operating an Assisted Living Residence without Certification under M.G.L. c. 19D shall be subject to liability for a civil penalty of not more than $500.00 for each day of such violation assessable by the Superior Court.

(2) Any such violation shall constitute grounds for refusing to grant or renew, modifying or revoking the Certification of the Assisted Living Residence or of any part thereof.

(3) Notwithstanding the existence or use of any other remedy, EOAI may, in the manner provided by law, maintain an action in the name of the Commonwealth for an injunction or other process against any person to restrain or prevent the operation of an Assisted Living Residence without Certification under M.G.L. c. 19D.

(4) No person or entity shall knowingly refer an individual for residency to an uncertified Residence. Such violation shall be punishable by a civil penalty of not more than $500.00 for each such violation assessable by the Superior Court. Such violation shall constitute a violation of M.G.L. c. 93A.

12.13: Retaliation

(1) No Residence shall discharge, discipline, discriminate against or otherwise retaliate against an employee or Resident who, in good faith, files a complaint with or provides information to EOAI relative to what the employee or Resident reasonably believes is a violation of law, rule or regulation or poses a risk to public health or safety or Resident or staff well-being.

(2) A Residence in violation of this section shall be liable to the person retaliated against by a civil action for up to treble damages, costs and attorney's fees in the event such violation shall be determined to be egregious or willful.

12.14: Advisory Council

Notwithstanding any general or special law to the contrary, an advisory council shall be established within EOAI. The advisory council shall advise the Secretary of EOAI relating to the regulations authorized under M.G.L. c. 19D. The advisory council shall be comprised of nine members, the Secretary of Aging & Independence or a designee who shall serve as chairperson, the Secretary of Housing and Livable Communities or a designee; the Secretary of Health and Human Services or a designee, and six members to be appointed by the Governor upon nomination by the Secretary of Aging & Independence. Of such six nominees, the Secretary shall nominate three persons who represent Resident consumer interests and two persons who represent Sponsors and Executive Directors of Assisted Living Residences. The advisory council shall by majority vote establish its own rules and procedures. Members of the council shall be appointed for terms of one year each. The council shall meet not less than on a quarterly basis, and it shall prepare a report of its activities, not less than annually. The annual report shall be made available to the public and the General Court.

12.15: Inapplicability of Certain Laws and Regulations to Assisted Living Residences

In accordance with M.G.L. c. 19D, § 18(a), premises or portions of premises Certified as Assisted Living Residence shall not be subject to the following laws:

(a) the determination of need process applicable to health care facilities in the Commonwealth as set forth in M.G.L. c. 111, §§ 25B through 25H;

(b) the licensing requirements for hospitals or institutions for unwed mothers or clinics set forth in M.G.L. c. 111, § 51;

(c) the patients and Residents rights requirements set forth in M.G.L. c. 111, § 70E;

(d) the HTLV-III testing, confidentiality and informed consent requirements applicable to a health care facility under M.G.L. c. 111, § 70F; however, physicians for health care providers to Assisted Living Residences are subject to these requirements;

(e) the licensing requirements for convalescent and licensed nursing homes, licensed rest homes, charitable homes for the aged, intermediate care facilities for persons with an intellectual disability and infirmaries maintained in towns (long term care facilities) set forth in M.G.L. c. 111, § 71;

(f) the requirements for deposit of inpatient or Resident funds for a long term care facility as set forth in M.G.L. c. 111, § 71A;

(g) the requirements for classification of long term care facilities set forth in M.G.L. c. 111, § 72;

(h) the requirements for lighting and ventilation for convalescent or nursing homes set forth in M.G.L. c. 111, § 72C;

(i) the requirements for telephone access for long term care facilities set forth in M.G.L. c. 111, § 72D;

(j) the requirements for notices of violations, plans of correction, penalties and enforcement for long term care facilities set forth in M.G.L. c. 111, § 72E;

(k) the patient abuse reporting requirements applicable to long term care facilities under M.G.L. c. 111, §§ 72H through 72L;

(l) the receivership requirements for long term care facilities set forth in M.G.L. c. 111, §§ 72M through 72U;

(m) the requirements for storage space for long term care facility residents set forth in M.G.L. c. 111, § 72V;

(n) the requirements for long term care facility nurses aide training set forth in M.G.L. c. 111, § 72W;

(o) the requirements for no smoking areas in nursing homes as set forth in M.G.L. c. 111, § 72X;

(p) the requirements for nursing pool regulations for long term care facilities set forth in M.G.L. c. 111, § 72Y;

(q) the penalties regarding unlicensed operation of a long term care facility under M.G.L. c. 111, § 73;

(r) the exemption from Department of Public Health licensing or inspection rules regarding long term care facilities operated by the First Church of Christ, Scientist in Boston set forth in M.G.L. c. 111, § 73A;

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(s) the requirements for long term care facilities operated for duly ordained priests, or for members of the religious orders of the Roman Catholic Church in their own locations, buildings, Assisted Living Residence or headquarters to provide care for such priests or members of said religious orders set forth in M.G.L. c. 111, § 73B;

(t) the requirement for a special permit under local zoning by-laws for the use of structures as shared housing for older adults upon the issuance of a special permit as set forth in M.G.L. c. 40A, § 9.

12.16: Emergency Waivers

The Secretary, or a designee, at their discretion and in consultation with the Commissioner of DPH, may temporarily waive, suspend, or modify one or more of the requirements of 651 CMR 12.00 as necessary to respond to an emergency situation, provided that any such waiver, suspension, or modification:

(1) is documented in writing;

(2) identifies the conditions that have made such a waiver necessary;

(3) identifies the specific requirement of 651 CMR 12.00 to be addressed and the action to be taken;

(4) is narrowly tailored to achieve its stated objective;

(5) is implemented to ensure the health, safety, and welfare of the citizens of the Commonwealth;

(6) is not in violation of any applicable federal or state law; and,

(7) ceases upon the termination of the emergency situation.

12.17: Use or Disclosure of Personal Data between and among EOHHS and EOHHS Agencies

EOAI may disclose information regarding a Residence or Resident to EOHHS or an EOHHS Agency when such disclosure is directly connected to the administration of an agency program or administrative oversight and the disclosure is not inconsistent with federal or state law.

REGULATORY AUTHORITY

651 CMR 12.00: M.G.L. c. 19A, § 6; M.G.L. c. 19D.