

OFFICE OF THE ATTORNEY GENERAL

940 CMR 40 ASSISTED LIVING RESIDENCES

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40.01 Purpose

The Attorney General of the Commonwealth of Massachusetts promulgates 940 CMR 40 pursuant to authority granted to the Attorney General under M.G.L. c. 93A, § 2(c). 940 CMR 40 is designed to promote the protection, health and well-being of Residents of Assisted Living Residences and to be consistent with existing legal standards.

40.02 Scope

These regulations shall apply to Assisted Living Residences defined in M.G.L. c. 19D, §§ 1 and 2.

940 CMR 40 defines unfair or deceptive acts or practices that violate M.G.L. c. 93A, § 2(a). These regulations are not intended to define all activities that violate the statute. Acts or practices not specifically proscribed in 940 CMR 40 are not to be treated, by implication, as permitted under M.G.L. c. 93A or other applicable law.

40.03: Definitions

As used in 940 CMR 40, the following words have the following meaning:

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 or Assessment Fee. Any charge billed to and payable by a Resident as a condition of admission, excluding room, board, and ongoing services, including any fee to conduct an initial screening assessment with each Resident.

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Advertisement. Any representation a) made in a newspaper, in a magazine, or other publication; or b) contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, catalog, or letter; or c) presented through or during the use of any electronic device or the use of a software application, including via telephone, text message, radio, television, or the Internet.

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 institution or distinct part of an institution, however organized, whether conducted for profit or not for profit, which is advertised, announced or maintained for the express or implied purpose of all of the following criteria:

- (a) providing room and board;
- (b) providing, 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
- (c) collecting payments or third-party reimbursements from or on behalf of Residents to pay for the provision of assistance with Activities of Daily Living or arranging for the same.

Basic Health Services. Certain services provided at an Assisted Living Residence by employees of the Residence who are qualified to administer such services or by a qualified third party in accordance with a care order issued by a 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, influenza, 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. Basic Health Services shall be permitted in Residences certified to provide such services.

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.

Clear and Conspicuous. Without limiting any other provisions of law, disclosures required by these regulations shall be of such size or color contrast and so placed as to be easily noticeable and easily understandable by older adults reading advertising, sales promotional literature, rental agreements, documentation, signage, or bills containing same. A term is conspicuous when it is so written that a person against whom it is to operate ought to have noticed it. A notice or sign is conspicuous when presented in a way that is easily noticeable and difficult to miss in a location frequented by Residents. Language in the body of a form is conspicuous if it is in larger or contrasting type or color. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual

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elements so that it is easily noticed, read, and understood. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

Emergency. A situation in which the Resident's medical or psychological condition requires immediate medical attention or treatment; the existence of an emergency shall be determined by a physician, except that if a physician is not readily available, the existence of an emergency may be determined by the person on the premises of the assisted living residence who is in charge of the residence's medical or nursing services at the time that the situation giving rise to the emergency occurs or is about to occur.

EOAI. The Executive Office of Aging and Independence.

Fee. Any charge billed to a Resident by the Assisted Living Residence or payable by a Resident.

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.

Lessor. Any person, corporation, or other entity that owns the building or land on which an Assisted Living Residence is located.

Manager. The individual who has general administrative charge of an Assisted Living Residence.

Operator. Any person, corporation, or other entity who operates, maintains, controls, or supervises an Assisted Living Residence.

Owner. Any person, corporation, or other entity with a direct or indirect possession of equity in the capital, stock or profits totaling more than 5 per cent of an Assisted Living Residence.

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.

Rent. The monthly charge a Resident must pay to reside in a Unit and receive the Resident Services offered to all Residents.

Residency Agreement. The written contract between an Assisted Living Residence and a Resident or prospective Resident on either a temporary (for example, for respite care) or more permanent basis, as well as any later addenda thereto.

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.

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Resident Representative. An individual who is authorized by the Resident to help the Resident fully participate in planning services or paying fees. This can, but need not, include the individual's health care proxy or Legal Representative

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.

Self-administered Medication Management. A process which includes reminding Residents to take medication, opening containers for Residents, opening prepackaged medication for Residents, reading the medication label to Residents, creating written records for the Residents of the administration of doses of the medication, and observing Residents while they take the medication.

Service. Any care or product for which the Assisted Living Residence charges a Resident a Fee, including but not limited to Resident Services, Personal Care Services, or optional services, including Basic Health Services.

Special Care Residence. 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.

Sponsor. The person or legal entity named in the Certification of an Assisted Living Residence regulated by the EOAI.

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.

Total Cost. The maximum price a Resident must pay for a Service, Fee, or Rent, inclusive of all Fees, charges, or other expenses.

Written Acknowledgement. A copy of a signed statement by a Resident or the Resident's Legal Representative, preserved in the Resident's personal file, stating that the Resident has received a copy of the documents required to be tendered to the Resident; if a Resident is unable or unwilling to sign their name, the Assisted Living Residence may satisfy the requirement of written acknowledgement by placing a written and dated statement in the Resident's personal records which indicates receipt of the documents and the Resident's inability or unwillingness to sign the Resident's name; such statement must be signed by the person who tendered the required documents to the Resident and by a witness thereto and must include a detailed explanation of the Resident's inability or unwillingness to sign the Resident's name. If the

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Resident's personal file is an electronic rather than physical file, having an image of the signed statement in the electronic file is deemed to satisfy the need to preserve the Written Acknowledgement.

40.04: Unfair or Deceptive Acts or Practices: General Provisions

- (1) It is an unfair or deceptive act or practice in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager or Lessor of an Assisted Living Residence:
  - (a) to fail to comply with any existing state or federal statute, rule or regulation which provides for the protection of health or safety of Residents or prospective residents of Assisted Living Residences, including, but not limited to, the Residents' rights set out in M.G.L. c. 19D and 651 CMR 12;
  - (b) to make or publish, or cause to be published, any false, untrue or deceptive statement or representation or any statement or representation that has the tendency or capacity to mislead or deceive Residents, prospective Residents or any other person, by way of advertising or otherwise concerning the Residence or the character, nature, quality or value of services provided to Residents;
  - (c) to fail or refuse to inform the Resident that the Attorney General has promulgated consumer protection regulations relating to Assisted Living Residences. Such disclosure shall be made both orally and in writing at the start of the Resident's tenancy in Clear and Conspicuous type, in a language the Resident understands; or
  - (d) to fail or refuse to furnish a copy of 940 CMR 40 printed in Clear and Conspicuous type. For new Residents, such disclosures shall be made at the start of the Resident's tenancy at the Assisted Living Residence; disclosure to each Resident shall also be made annually thereafter and at any time the Resident makes a reasonable request for 940 CMR 40; in the case of a Resident adjudged incompetent, the facility may satisfy the requirements of these regulations by making a reasonable effort to inform the Resident of their rights under 940 CMR 40 and by satisfying the requirements pertaining to notification of their Legal Representative.
- (2) Misrepresentations. In connection with any Advertising or marketing, solicitation or rental of a Unit in an Assisted Living Residence, the following shall constitute an unfair and deceptive practice under G.L. c. 93A § 2(a):
  - (a) Misrepresenting, or failing to disclose Clearly and Conspicuously, the actual Total Cost of any Fee, Service, or Rent at the time of the initial presentation of the price, or any subsequent presentation thereafter;

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- (b) misrepresenting or failing to disclose the licensure, certification, training or qualification of anyone providing services to Residents;
- (c) misrepresenting or failing to disclose the actual Services or amenities offered to Residents, including but not limited to, activities, social outings, dining or nutritional options, transportation services, grounds, physical space, location, Resident services, Personal Care Services, or optional services, including Basic Health Services available to Residents; or
- (d) misrepresenting or failing to disclose the staffing levels of an Assisted Living Residence, whether in total or for a specific time period or shift, by, among other things, counting part-time employees in the same manner as full-time employees, or including staff who do not provide Services directly to Residents.

40.05: Disclosures

- (1) It is an unfair or deceptive act or practice in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager or Lessor of and Assisted Living Residence:
  - (a) to fail to include any information required by state or federal law or statute in a Resident's Residency Agreement, disclosure statements or other residency documents;
  - (b) to fail to provide any Resident with copies, upon request, of all contractual obligations of the Assisted Living Residence and the Resident, whether directly involving the Resident or any third parties with whom the Assisted Living Residence contracts to provide goods or services to the Resident; or
  - (c) to fail to meet the reporting requirements of 651 CMR 12.04(14).
- (2) It is an unfair or deceptive act or practice in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager or Lessor of and Assisted Living Residence:
  - (a) to fail to disclose in Clear and Conspicuous writing, at the start of a Resident's tenancy, that, if a resident's income is insufficient to pay for the full amount of their monthly charges, and, if at any time the resident does not have sufficient access to other sources of funding, whether through family, personal assets, or otherwise, to pay the full amount of their monthly charges, and, as a result, the Resident fails to pay their Rent, the Resident could be subject to eviction proceedings and no longer remain a Resident at the Assisted Living Residence; or
  - (b) to fail to inform a Resident or an authorized Representative of the Resident, directly and through posting in a conspicuous location, the name and contact information of the Long-Term Care Ombudsman office and the telephone number of the Elder Abuse Hotline.

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- (3) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a legal entity or person to fail to make any disclosure to the EOAI as required during the application for Certification of an Assisted Living Residence as detailed in 651 CMR 12:03(2) and M.G.L. c. 19D.
- (4) If an Assisted Living Residence allows non-Residents to use any of its facilities, such as a swimming pool, gymnasium or other meeting or function room, it is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to fail to disclose the fact of such usage to Residents prior to a Resident's signing of a Residency Agreement. Said disclosure shall: inform Residents of the existence of non-regulated programming on site; disclose the amount of interaction or shared use of the facilities; and describe any resultant impact on Residence staffing.
- (5) If an Assisted Living Residence contains a Special Care Unit or is a Special Care Residence, the Residence shall provide a written disclosure statement to the Resident and Resident Representative (if applicable), or Legal Representative describing its special care philosophy and mission and explaining how it implements this philosophy and achieves the stated mission.

**40.06: Payments and Billing**

- (1) **Charges.** It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
  - (a) to fail to itemize in a Clear and Conspicuous manner all bills for Fees, charges, and expenses for the provision of housing, assessments, Resident Services, Personal Care Services, medical services, and additional Services, including enumeration and breakout of the components of all bundled Fees;
  - (b) to impose, seek to impose, or collect a charge related to a Service not proffered or provided to the Resident;
  - (c) to impose, seek to impose, or collect a charge for a service the Resident did not request or agree to receive, outside of an Emergency requiring medically necessary services;
  - (d) to impose, seek to impose, or collect a charge for a Service at a rate other than the rate to which the Resident agreed in their Residency Agreement or any amendment thereto;
  - (e) to increase the price of a Service provided by the Residence without first providing 60 days' notice to the Resident, regardless of whether the Resident has agreed to the increase as described in subsection (d) above;

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- (f) to enforce a 30-day notice of vacancy policy in the event of the Resident's death. The assisted living residency shall be entitled to Rent and fees for not more than 10 days from the date of the Resident's death. If there is personal property to remove that impedes the reuse of the Resident's unit, the 10-day period shall not begin until after the family, estate, or responsible party has removed the deceased person's personal property. If the room is occupied by a new Resident before the expiration of the 10-day period, Rent and fees for the 10-day period shall be prorated from the date of such occupancy;
  - (g) to allow any personnel of the Residence to control or manage any Resident's funds or property, except as provided by 651 CMR 12.04(6)(a)6;
  - (h) to impose any interest or penalty for late payment of Rent unless such payment is more than 30 days overdue; or
  - (i) to fail to provide within seven (7) business days, a response to any request by a Resident, or on behalf of a Resident by an authorized person, for an accounting of any charges for Rent or Services alleged to have been provided, or for any record or ledger of payments made by, or on behalf of, the Resident.
- (2) Financial Assistance. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
- (a) to refuse to cooperate with or otherwise comply with a Resident's request to participate as a member in a Senior Care Organization, a PACE program, a Group Adult Foster Care program, or similar health maintenance program, which assists a Resident in obtaining assisted living or other Services from a third-party provider; or
  - (b) to fail to obtain a Resident's written informed consent to have Resident Services, Personal Care Services, home health, medical, or any other Services provided by the Assisted Living Residence directly without coverage by Medicare and Medicaid funds, when such Services otherwise may be covered by a third-party provider which is paid by Medicare or Medicaid funds; or
  - (c) to fail to or refuse to cooperate with or otherwise comply with a Resident's request to participate as a member of housing subsidy program in order to assist in payment of their rental housing costs, notwithstanding an Assisted Living Residence's right to refuse to accept a Resident's participation in such a program if the program, either in whole or in part when combined with the Resident's own payments, will not cover the market rate for the provision of rental housing.

40.07: Tenancy Protections

- (1) Residency Agreement. It is an unfair or deceptive act in violation of M.G.L. c. 93A, §2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to

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enter into or attempt to enter into a Residency Agreement with a Resident that does not comply with the Residency Agreement requirements of M.G.L. c. 19D, § 14 and 651 CMR 12.08(2).

(2) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to enter into or attempt to enter into a Residency Agreement with a Resident that:

- (a) violates any law intended for the protection, safety and well-being of tenants;
- (b) fails to state Clearly and Conspicuously in the rental agreement the conditions upon which an automatic increase in Rent shall be determined;
- (c) contains a penalty clause not in conformity with the provisions of M.G.L. c. 186, § 15B; or
- (d) contains a tax escalator clause not in conformity with the provisions of M.G.L. c.186, § 15C.

(3) Arbitration. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to fail to disclose, both orally and in writing, to the Resident and, if applicable, their Legal Representative:

- (a) the existence of any arbitration provision within any document they are presented with to sign; and
- (b) the impact of signing any arbitration agreement, including but not limited to the fact that the Resident may be forfeiting their right to a jury trial, and their right, as a consumer, to prosecute a claim under M.G.L. c.93A in court, and that, instead, the Resident may be required to submit to mandatory arbitration to prosecute any such claim.

(4) Residential Units. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:

- (a) to rent a Unit to a Resident that, at the inception of the Resident's tenancy, contains a condition which amounts to a violation of law which may endanger or materially impair the health, safety, or well-being of the Resident, or is unfit for human habitation;
- (b) to fail, after notice is provided in accordance with M.G.L. c. 111, § 127L to remedy a violation of law in a Unit which may endanger or materially impair the health, safety, or well-being of the Resident, or maintain the Unit in a condition fit for human habitation;

- (c) to fail to disclose to a prospective Resident the existence of any condition amounting to a violation of law within the Unit of which the Assisted Living Residence had knowledge or upon reasonable inspection could have acquired such knowledge at the start of the tenancy;
  - (d) to represent to a prospective Resident that a Unit meets all requirements of law when, in fact, it contains violations of law;
  - (e) to fail to make repairs in accordance with a pre-existing representation made to the Resident within a reasonable time after receipt of notice from the Resident;
  - (f) to fail to comply with the State Sanitary Code or any other law applicable to the conditions of a Unit within a reasonable time after notice of a violation of such code or law from the Resident or a local or state agency;
  - (g) to retaliate or threaten to retaliate in any manner against a Resident for exercising or attempting to exercise any legal rights as set forth in M.G.L. c. 186, § 18; or
  - (h) to violate willfully any provisions of M.G.L. c. 186, § 14.
- (5) Security Deposit. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence,
- (a) at or prior to the commencement of any Resident's tenancy, to require a Resident or prospective Resident to pay any amount more than is authorized by M.G.L. c. 186, §15B and, if applicable, an assessment Fee to cover the cost of the initial assessment and intake required by 651 CMR 12.04, unless the Resident is eligible for the medical assistance program under M.G.L. c. 118E.
  - (b) to fail to keep and maintain any funds collected as last month's Rent or Security Deposit in accordance with the requirements of M.G.L. c. 186 § 15B.
- (6) Eviction. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
- (a) to fail to comply with M.G.L. c. 186 and M.G.L. c. 239 in any dispute or action to evict a Resident;
  - (b) to deprive a Resident of access to or full use of the Resident's assigned Unit or otherwise exclude the Resident without first obtaining a valid writ of execution for possession of the premises as set forth in M.G.L. c. 239 or such other proceedings authorized by law, or for the purposes of addressing an urgent health or safety issue related to the Unit;
  - (c) to commence summary process for possession of a Unit before the time period designated in the notice to quit under M.G.L. c. 186, §§ 11 and 12, has expired;

provided, however, nothing in 940 CMR 40 shall affect the rights and remedies contained in M.G.L. c. 239 § 1A;

- (d) to issue a notice to quit under M.G.L. c. 186 § 11 for any unpaid charges other than Rent; or
- (e) to include in any notice to quit or summary process complaint a demand for any payments other than for Rent. Such a demand may not include attorney's fees, expenses, penalties, costs, or Fees of any kind.

#### 40.08: Resident Rights

- (1) Initial Meeting. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
  - (a) to fail to inform a prospective Resident of their right to be accompanied by a Legal Representative or other adviser prior to scheduling a formal meeting;
  - (b) to fail to provide during the first meeting with a prospective Resident as part of the application, admission or leasing process, the consumer guide and disclosure of rights and services required by 651 CMR 12.08(3) which incorporates the provisions of 651 CMR 12.08(1); or
  - (c) to include, as part of the application, admission, or leasing process, any documents printed in less than 14-point type, and in a language other than one which the prospective Resident understands.
- (2) Initial Assessment. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
  - (a) to fail to conduct an initial screening and assessment with each Resident as required by 651 CMR 12.04(7), or
  - (b) to fail to complete an individualized service plan for each Resident upon entry and to update the plan, as required by 651 CMR 12.04(8).
- (3) Conditions of Admission. It is an unfair or deceptive act in violation of M.G.L. c. 93A, §2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
  - (a) to require a Resident or a prospective Resident, or their Legal Representative, as a condition for admission, expedited admission, or continued stay in the Assisted Living Residence, to agree to treatment by a physician chosen by the facility or otherwise to limit the Resident's right to choose the Resident's attending physician including by charging the Resident additional fees to see the physician of their choosing;

- (b) to require a Resident or a prospective Resident, or their Legal Representative, as a condition of admission, expedited admission, or continued stay in the facility, to purchase medications at or from a pharmacy chosen by the facility, or to otherwise limit the Resident's right to select a pharmacy of the Resident's choice including by charging the Resident additional fees to use the pharmacy of their choosing;
  - (c) to require a Resident or a prospective Resident, their Legal Representative, as a condition for admission, expedited admission, or continued stay in the Assisted Living Residence, to agree to receive Basic Health Services from a third party chosen by the Residence or otherwise to limit the Resident's right to choose who provides the Resident's Basic Health Services;
  - (d) to require a Resident or a prospective Resident, or their Legal Representative, as a condition for admission, expedited admission, or continued stay in the Assisted Living Residence, to agree to waive or limit the Assisted Living Residence's liability for loss of personal property or any injury, financial, personal, or otherwise, suffered as a result of actions on the part of the Assisted Living Residence or of the Assisted Living Residence's employees or agents;
  - (e) to require a Resident or a prospective Resident, or their Legal Representative, as a condition for admission, expedited admission, or continued stay in the Assisted Living Residence, to agree to pay attorney's fees, incurred in collecting payment from the Resident or in seeking their removal from the Assisted Living Residence; or
  - (f) to require a Resident or a prospective Resident, or their Legal Representative, as a condition of initial or continued occupancy to provide a third-party guarantee of payment to the Assisted Living Residence, notwithstanding an Assisted Living Residence's right to refuse occupancy to a prospective Resident who cannot provide verification of sufficient income, benefits, and/or assets to pay for all monthly charges.
- (4) Facility Operations. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to fail to provide a Resident with a Residency Agreement and disclosure statement that includes all material terms required of Resident Agreement relating to staffing, policies and procedures for Self-administered Medication Management, the role of the nurse(s) (RNs and LPNs) employed by the Assisted Living Residence, a copy of the instruction to Residents in the Residence's Disaster and Emergency Preparedness Plan, and other Resident Rights as set forth in 651 CMR 12.08(3).
- (5) Provision of Services. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to fail:

- (a) to provide all services included in a Resident's individual service plan;
  - (b) to comply with any corrective actions ordered by EOAI, or orders issued by any other government agency with authority over the Assisted Living Residence;
  - (c) to allow any duly designated officer or employee of EOAI access to the Assisted Living Residence to inspect at any time without prior notice any Unit within an Assisted Living Residence, with the permission of the Resident; or
  - (d) to assist the Long-Term Care Ombudsman Program in its duties as required by 101 CMR 30.00 and 651 CMR 12.04(10).
- (6) Safety and Quality Standards. It is an unfair or deceptive act in violation of M.G.L. c.93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
- (a) to fail to establish and maintain a Quality Assurance and Performance Improvement program to evaluate its operations and services as required by 651 CMR 12.04(11);
  - (b) to fail to comply with the requirements of 651 CMR 12.04 through 12:07;
  - (c) to fail to implement a plan to prevent and limit the spread of communicable disease as required by 651 CMR 12.04(13); or
  - (d) to fail to provide a Resident or, if applicable, the Resident's Legal Representative, upon reasonable request, with the most recent copy of any reports, responses and notices of final action that resulted from an annual or biennial review conducted by EOAI.
- (7) Basic Health Services. It is an unfair or deceptive act in violation of M.G.L. c. 93A, §2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to fail to report an incident involving Basic Health Services that causes a Resident harm at the Assisted Living Residence to EOAI not later than 24 hours after said incident.
- (8) Retaliation. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to retaliate against a Resident or staff member for reporting or pursuing legal actions against the Assisted Living Residence for any violations of the sanitary code, EOAI regulations, elder abuse, or any other law or regulation which has the purpose of protecting older adults or Residents of an Assisted Living Residence.
- (9) Special Care Residences. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to fail to meet Special Care requirements as described in 651 CMR 12.04(5).

40.09: Privacy and Other Personal Rights

- (1) Visitation. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to refuse to permit Resident visitation from family, friends, social, legal, or medical supports, a duly appointed designee of the Long-Term Care Ombudsman, or other guests of a Resident's choice, unless such visitation would endanger the safety of Residents and staff and the Residence documents any such safety concern
- (2) Abuse. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
  - (a) to fail or refuse to effectuate the right of any Resident to be free from verbal, sexual, physical and mental abuse, corporal punishment, and/or involuntary seclusion;
  - (b) to fail or refuse to effectuate the right of any Resident to be free from discrimination or harassment on the basis of a status protected by state or federal law;
  - (c) to fail or refuse to effectuate the right of any Resident to be free from any physical or chemical restraints, except in accordance with state and federal law;
  - (d) to administer or permit the administration of any anti-psychotic drug without a Resident's clear informed consent or to any Resident who has been adjudged incapacitated in making treatment decisions other than pursuant to a court-ordered substituted judgment establishing a treatment plan in accordance with the standards set forth in *Rogers v. Commissioner of Department of Mental Health*, 390 Mass. 489 (1983), and subsequent case law; or
  - (e) to fail or refuse to ensure that alleged violations involving mistreatment, neglect or abuse, including injuries of unknown source and/or misappropriation of Resident property, are reported immediately to the Manager of the Assisted Living Residence, EOAI, and other officials in accordance with state law.
- (3) Privacy. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
  - (a) to fail or refuse to assure a Resident's privacy during the provision of assisted living services, including but not limited to bathing, dressing and toileting, Basic Health Services, or any other Services provided by the Assisted Living Residence.
  - (b) to fail or refuse to assure a Resident's privacy within their Unit, subject to rules of the Assisted Living Residence which are reasonably designed to promote the health, safety and welfare of Residents; or

- (c) to enter a Resident's unit, without the Resident's permission or without a legitimate purpose related to the operation of the Assisted Living Residence.
- (4) Records. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence:
- (a) to fail or refuse to permit a Resident and the Resident's Representative, or their Legal Representative, upon an oral or written request, to access within 24 hours all records pertaining to any services provided by the Assisted Living Residence or its contractors to the Resident;
  - (b) to fail or refuse to provide a Resident and the Resident's Representative (if applicable), or their Legal Representative with a copy of all records pertaining to any services provided by the Assisted Living Residence or its contractors to the Resident within 2 business days of a Resident's request;
  - (c) to release a Resident's Personal Information to any individual outside the Assisted Living Residence without the prior written authorization of the Resident and Resident's Representative (if applicable), or their Legal Representative, except to the extent necessary to protect the health or safety of a Resident, guest, or staff member from an urgent threat or as required by state law or regulation.
- (5) Emergencies. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to fail or refuse to immediately inform the Resident and the Resident Representative or health care proxy (if applicable), or the Legal Representative, if there is:
- (a) an accident involving the Resident which results in injury and has the potential for requiring physician intervention;
  - (b) a significant change in the Resident's physical, mental or psychosocial status (e.g., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications); or
  - (c) a need to alter the service plan significantly (e.g., a need to discontinue an existing Service, or to augment Services, including by providing or altering the provision of Basic Medical Services, as may or may not be offered by the Assisted Living Residence).
- (6) Grievances. It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence to:
- (a) fail or refuse to permit a Resident to present grievances free from restraint, interference or coercion, discrimination or reprisal, on both their own behalf or on behalf of others, to the facility's staff, to government officials including, but not

limited to, a representative of the EOAI or a duly appointed designee of the Long-Term Care Ombudsman, if applicable, or to any other person; or

- (b) fail to take prompt action to resolve any grievance presented by a Resident or their legal representative, or to fail to respond promptly, to the extent possible, to all requests or inquiries made by a Resident, their legal representative, or a duly appointed designee of the State Long Term Care Ombudsman.

#### 40.10: Relations to Other Laws and Regulations

- (1) Although the provisions of 940 CMR 40 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 will be subject to 940 CMR 40:
  - (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, the Rehabilitation Commission, or the Department of Developmental Services;
  - (f) 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; provided, however, that such premises are not currently licensed under M.G.L. c. 111.

#### 40.11: Severability

- (1) If any provision of 940 CMR 40 or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of 940 CMR 40 and the applicability of such provision to other persons or circumstances shall not be affected thereby.