

## RESIDENTS' LEGAL RIGHTS IN LONG-TERM CARE

### An Act To Improve Quality And Oversight Of Long-Term Care

On Sept. 6, 2024, Gov. Maura Healey signed an omnibus law, Chapter 197 of the Acts of 2024, to improve the quality and oversight of long-term care, effective Dec. 5, 2024. The law contains major changes to the regulation of nursing homes and assisted living residences, provides greater resident protections and creates several task forces to examine the further regulation of the various entities that provide long-term care services. Doubtless, as the law is implemented, the coming years will see some changes in the provision of long-term care services.

### A. CONTINUUM OF CARE

#### 1. Definition

Long-term care services are provided along a spectrum of care. Service might be provided in a private home, a continuing care retirement community, an assisted living residence (ALR) or a nursing facility. It is important for consumers to understand the differences between the settings and the different rules that apply within each context.

#### 2. Nursing Home Care

- a. **24/7 care:** Nursing homes provide around-the-clock nursing care and assistance with activities of daily living (ADLs). Nursing homes, technically “long-term care facilities,” are subject to state and federal law, as well as regulations issued by the Massachusetts Department of Public Health (DPH), the state Medicaid program (MassHealth), the Office of the Attorney General and the federal Center for Medicare and Medicaid Services (CMS). Many of the regulations will be discussed below.

#### 3. Assisted Living

- a. **Definition:** Assisted living has traditionally been a residential arrangement providing room and board for eligible older adults and disabled individuals who need some minimal aid, support, or supervision with activities of daily living, such as meal preparation, medication regimen, housekeeping, clothes laundering, dressing or bathing, grocery shopping and transportation needs.<sup>1</sup>
- b. **Level of Care:** Prior to the COVID pandemic, assisted living residents should not have required the level of care provided in a nursing home.<sup>2</sup> However, the recently enacted omnibus long-term care legislation now allows ALRs to provide certain health care services, as detailed below.
- c. **Menu of services:** Typically, ALRs offer a “menu” of services, for which a resident must pay extra. Assisted living is intended to encourage the maintenance of older adults’ autonomy and privacy.<sup>3</sup> ALRs often have “memory care” units.

#### 4. Continuing Care Retirement Community

- a. A continuing care retirement community (CCRC) is an option that offers single and married older adults a continuum of housing, independent living, support services and skilled nursing care that is intended to allow them to remain housed in the same community as their services are adjusted and altered depending upon their needs.<sup>4</sup> It is a comprehensive and individualized plan offering such services as nursing and health care, housekeeping, transportation, meals and special diets, recreational activities and emergency help.<sup>5</sup> Any skilled nursing care unit in a CCRC is subject to DPH and MassHealth regulations. However, CCRCs are not subject to the rules regarding ALRs.

## ARBITRATION

Long-term care providers — nursing homes, ALRs and CCRCs — frequently include pre-dispute, binding arbitration requirements in their admission agreements.

### Harm by provider

By agreeing to arbitration, consumers are giving up important rights, including the constitutional right to a jury trial, and right to file a class-action lawsuit, in case they are harmed by the provider. Although the long-term care industry has argued that arbitration helps reduce legal costs, there is no good reason for residents to voluntarily agree in advance to waive their rights; alternative dispute resolution is always an option once a dispute has arisen if the parties agree.

### Forced arbitration

The practice of forced arbitration has had the effect of denying residents and their family members access to justice.

### Confidentiality

Because arbitrations are confidential and there is no record of the outcomes, the use of forced arbitration has also operated to keep issues of abuse and neglect out of the public eye. Residents and their families should be aware of the prevalence and risks of arbitration, and should exercise their right to “just say no” to arbitration clauses in admission agreements.

**See the brochure regarding this issue in the Appendix at the end of this chapter.**

## B. NURSING HOME CARE

### 1. Choosing a Nursing Home

- a. **CMS website tool:** Once a health care practitioner has determined the level of care you need, you are able to make choices on which nursing home to use. CMS has a website tool that allows you to compare nursing homes and select the most appropriate ones. (See [www.medicare.gov/care-compare/?providerType=NursingHome&redirect=true](http://www.medicare.gov/care-compare/?providerType=NursingHome&redirect=true)).
- b. **Ratings:** This website provides a wealth of information, including data on health inspections, staffing, quality measures and quality ratings. The nursing home reports this information to CMS, so it is important to visit the nursing home in person before you make a final decision.
- c. **Medicaid-certified:** Although most nursing homes in Massachusetts are Medicaid-certified, not all are, so a resident may only be able to stay in a private facility as long as they are able to pay for the required care. In order to use a Medicaid benefit to pay for nursing home care, the nursing home must be Medicaid-certified.<sup>6</sup> Although the Attorney General’s regulations and Massachusetts law prohibit discrimination based on eligibility for MassHealth benefits, these provisions are often difficult to enforce.<sup>7</sup>
- d. **Ombudsman and others:** When choosing a nursing home, it is important to speak with others, such as the long-term care ombudsman, care managers (often referred to as aging life advocates), residents, and family members of residents. It is fair to say that the nursing home system has not recovered from the COVID pandemic, in particular with respect to widespread staffing shortages. The Massachusetts Advocates for Nursing Home Reform, a program of Dignity Alliance of Massachusetts ([www.manhr.org](http://www.manhr.org)), and the National Consumer Voice for Quality Long-Term Care ([www.theconsumervoice.org](http://www.theconsumervoice.org)) websites contain information on how to select a nursing home and what questions to ask.
- e. **Quotes:** The following are quotes from the Massachusetts Advocates for Nursing Home Reform website:
  - i. Surveys measure whether the nursing home meets certain “minimum” standards. If a nursing home has no deficiencies, it means that it met the minimum standards at the time of the survey. It is important to realize that surveys and ratings do not identify nursing homes that give

outstanding care.

- ii. While reading the Massachusetts and federal reports, keep in mind that the quality of a nursing home may get much better or much worse in a short period of time. These changes can occur when a nursing home's administrator or ownership changes or when a nursing home's finances suddenly change.
- iii. Survey inspectors are only in the nursing home for a few days, which means surveys only provide a "snapshot" of what the facility is like — and the "snapshot" is usually taken when the facility administration and staff know they are being observed. In addition, inspectors do not look at the care of all residents; they only look at a sample of residents.
- iv. Remember — Government agency reports represent "one piece of the puzzle" in searching for a nursing home. Low ratings can tell more of a story than high ratings. Consider ratings with your personal perceptions and other research to help make an informed decision.

## 2. Dementia Care Standard for Nursing Homes

- a. **Safeguards:** Massachusetts law provides further safeguards for dementia residents in nursing homes in the form of regulations that require all direct care workers to have eight hours of initial dementia care training, pass an exam, and have an additional four hours of training annually.
- b. **Dementia Special Care Units (DSCUs):** DSCUs provide specialized care to nursing home residents with dementia through a combination of additional and ongoing dementia care training, expanded activities, and a safe and comfortable physical environment (e.g., special lighting and floor coverings to minimize confusion, safe/supervised access to the outdoors, etc.).
- c. **DPH certification:** Not every nursing home in Massachusetts has a DSCU, since compliance with DSCU law is not mandatory. DSCUs must be certified every year by DPH, and finding out if a nursing home has one is as simple as just asking. DSCUs must have at least one "therapeutic activities director" who is responsible for developing and implementing activities for residents. These regulations ensure that dementia units are staffed with appropriately trained workers.<sup>8</sup>
- d. **Changes to prevent injuries:** The regulations mandate that a fence or barrier surround the facility to prevent injury and elopement of dementia care residents. Another significant change to the laws that aims to protect those living in dementia units is the prohibition against overhead paging systems, which often scare residents. Facilities can now use such systems only for emergencies.<sup>9</sup> DPH has promulgated guidance with respect to the administration of antipsychotic medications that requires the written consent of the resident, the resident's health care proxy agent or a duly authorized guardian.

## 3. Nursing Home Resident Rights

- a. **State and federal law:** Under state and federal law, nursing home residents are entitled to certain rights with regard to quality of care, treatment, safety and quality of life.
- b. **Lists of rights:** Nursing home residents have the right:
  - i. To obtain, upon admittance to the facility, written notice of their rights as residents;
  - ii. To freedom of choice of a physician, facility and health care mode;
  - iii. To obtain, upon request, an itemized bill for nursing home services;
  - iv. To have all medical records and communications kept confidential to the extent provided by law;
  - v. To have all reasonable requests responded to promptly within the capacity of the facility;
  - vi. To access all of their medical records upon request;
  - vii. To refuse to be examined, observed or treated without jeopardizing access to other medical care;

- viii. To have privacy during medical exams or treatment;
- xi. To have informed consent to the extent provided by law;
- x. To be permitted to share a room with one's spouse; and
- xi. To receive at least 48 hours' notice of a roommate change, barring any emergency.<sup>10</sup>

A nursing home resident is also entitled to certain rights relating directly to their personal freedoms, including the right:

- i. To communicate with persons of one's choice, privately and without restriction;
  - ii. To make a complaint or express a grievance free from reprisal, restraint, coercion or discrimination;
  - iii. To be free from any requirement to perform any service for the facility not in the resident's individual care plan, unless one volunteers or is paid for such service;
  - iv. To participate in social, religious and community groups;
  - v. To manage one's own financial affairs; and
  - vi. To keep and use personal possessions and clothing as space permits, and to have personal possessions reasonably safeguarded and secured.<sup>11</sup>
- c. **Prohibition on binding arbitration:** Effective September 2019, federal regulations provide that nursing home residents cannot be required to agree to binding arbitration as a condition of admission to, or continued stay in, a nursing home.<sup>12</sup>

## C. NURSING HOME TRANSFERS AND DISCHARGES IN MEDICAID- AND MEDICARE-CERTIFIED FACILITIES

### 1. Federal Law Protections

Nursing home residents should not be transferred or discharged from their rooms (their homes) without cause. A transfer is usually to a hospital where a resident is expected to return, whereas a discharge is to another facility or location and the resident is not expected to return. Under federal law, residents in Medicaid- and Medicare-certified facilities must be given adequate notice prior to a transfer or discharge, and be informed of their right to a hearing to contest the proposed transfer or discharge.<sup>13</sup> Most nursing homes in Massachusetts are certified to participate in the Medicaid and Medicare programs.

- a. **Transfer conditions:** The federal transfer and discharge requirements apply to transfers or discharges to a hospital, other institutional setting or community setting (return home), as well as to transfers between differently certified parts of a nursing facility. Intra-facility transfers are not subject to these requirements; the different requirements applicable to them are discussed later in this section.
- b. **Permissible reasons for transfer or discharge:** Before a nursing home can transfer or discharge a resident, there must be a permissible reason for the action properly documented in the resident's record. A resident can be moved only:
  - i. If necessary for the resident's welfare and the resident's needs cannot be met in the facility.
  - ii. If the resident's health has improved sufficiently so that the resident no longer needs nursing home care.
  - iii. Due to the clinical or behavioral status of the resident.
  - iv. If the health or safety of individuals in the facility would otherwise be endangered.
  - v. For nonpayment or if the resident does not submit the necessary paperwork for third-party payment.
  - vi. If the nursing home closes.<sup>14</sup>

However, a resident cannot be transferred or discharged for nonpayment pending an administrative appeal of a denial of eligibility.<sup>15</sup>

## 2. Discharge Planning

- a. **Required discharge plan:** As part of the discharge process, a facility must provide sufficient preparation and orientation to ensure a safe and orderly transfer or discharge from the facility, in a form and manner that the resident can understand, and the plan must be documented.<sup>16</sup> The resident may not be transferred if the resident files a timely appeal, whether the transfer is between different certified units, to another nursing home, to a hospital or to another setting.
- b. **Notice requirements:** Notice of a transfer to another facility or a discharge must be given to the resident, or the resident's designated representative and to the Office of the Ombudsman, at least 30 days in advance, except in an emergency. Notice may be given fewer than 30 days in advance but must be given as soon as possible when the health and safety of individuals in the facility would be endangered, a resident's health improves sufficiently to not require care in the facility, the resident has urgent medical needs (e.g., a need for hospitalization), or if the resident has resided in the facility for fewer than 30 days.<sup>17</sup>

The notice must specify the action to be taken, the specific reason(s) for the action, the effective date of the transfer or discharge, and the location to which the resident is to be discharged or transferred, and must inform the resident of appeal rights.<sup>18</sup>

- c. **Appeal:** Any resident wishing to appeal a transfer or discharge has the right to request a fair hearing through the Office of Medicaid Board of Hearings. A resident has the right to refuse hospitalization, and an appeal can be a useful mechanism to ensure that a resident's directives are followed. For a transfer to be approved, a hearing officer must find that the facility complied with all of the legal requirements. The assistance of an attorney or a care manager can be very useful in the appeal process.
- d. **Timely appeal (30 days):** If a timely appeal is filed (30 days from the date of the notice for non-emergency situations), the transfer or discharge may not occur until 30 days after a hearing decision is rendered. For emergency situations, the appeal period is 14 days. If the transfer or discharge has not taken place, the resident cannot be moved until five days after the decision. If the resident has been moved, the facility must readmit the resident to the next available bed in the event of a favorable decision.<sup>19</sup>

## 3. Intra-facility Transfers

- a. **Definition:** Massachusetts law governs transfers within the same certified facility. Transfers are permitted to different living quarters or to a different room based on a change in the resident's needs, e.g., the resident requires, or no longer requires, specialized accommodations, care, services, technologies or staffing not customarily provided in connection with the resident's living quarters.<sup>20</sup> The reason for an intra-facility transfer must be documented in the resident's clinical record by a physician.
- b. **Nonpayment or termination of coverage:** A resident should not be transferred based on a change in the payment status, such as termination of Medicare coverage or establishing eligibility for MassHealth. A nursing home may not discriminate against a resident based on source of payment. However, upon termination of Medicare coverage, a resident might wish to move to a different bed with a lower daily rate.
- c. **Notification to resident:** The resident must be notified of the proposed intra-facility transfer and the right to appeal to the facility's medical director.<sup>21</sup> The state law does not contain any provisions regarding the content of the notice or the appeal process. However, prior to a change of room, the resident must be given advance notice in writing with a reason for the change, and 48 hours' advance notice must be given for a change of roommate, except in an emergency.<sup>22</sup>

#### 4. Bed Hold

- a. **Massachusetts law 20-day hold:** Under Massachusetts law, a nursing home resident has the right to return to their bed following a medical or non-medical leave of absence, and the nursing home must notify the resident of this right. The bed of a MassHealth recipient must be held during this bed hold period.<sup>23</sup>
- b. **Private-pay residents may pay:** Private-pay residents may pay to hold their beds during such leaves.
- c. **Right to Return:** If a medical leave exceeds the bed hold period, the facility must admit the resident to the first available bed in a semi-private room.<sup>24</sup>
- d. **20-day bed hold defined:** The MassHealth bed hold period is currently 20 days for medical reasons and 20 days for personal leaves but subject to change on a yearly basis, since these limits are set in the annual Massachusetts budget.

#### 5. Readmission After Hospitalization

- a. **Right to readmission:** A nursing home resident has the right to be readmitted to the resident's nursing home following a hospitalization.
- b. **Appeal rights:** The failure of a nursing home to readmit a resident following a hospitalization is a discharge, which requires notice and appeal rights.<sup>25</sup> The resident has a right to file an appeal, even if a nursing home has failed to give the required notice.

#### 6. Department of Public Health Regulations (DPH)

- a. **DPH monitors and licenses all Massachusetts nursing homes:** DPH monitors and licenses nursing home facilities throughout the commonwealth.<sup>26</sup> To determine whether an applicant for a nursing home license is responsible and suitable for licensing, DPH will look to the applicant's criminal history, if any; financial capacity to operate a long-term care facility; and the applicant's history and experience in providing long-term care.<sup>27</sup>
- b. **Resident funds:** DPH sets out rules and regulations governing medical and nursing care, the maintenance of medical records, the handling of resident funds, the prevention of loss or damage to residents' personal possessions, and standards of facility sanitation.<sup>28</sup>
- c. **Right to visit and inspection:** DPH surveyors have the right to visit and inspect any nursing home at any time to monitor compliance with regulations.<sup>29</sup> Such inspections are unannounced, and occur at least twice per year.<sup>30</sup> If violations are found, the nursing home facility may be subject to a monetary fine, and will be expected to submit a plan of correction to DPH within a certain time period.
- d. **Public notice:** At the expiration of such time period, the violation will be made public if no correction plan has been submitted.<sup>31</sup>
- e. **Complaints:** DPH also fields complaints by or on behalf of nursing home residents through its website and telephone hotline.
- f. **Informed consent to treat with antipsychotic medication:** DPH requires nursing homes to obtain written informed consent to be treated with any psychotropic medication. The consent must be signed by the resident, the resident's health care agent or a duly authorized guardian.
- g. **Consent must be documented:** The written informed consent must be documented on a form approved by DPH and kept in the resident's medical record, and must include, at a minimum, the purpose for administering the psychotropic drug, the prescribed dosage and any known side effect of the medication. Note that guardians of protected persons must obtain court approval to consent to the administration of antipsychotic medication.
- h. **Informed consent for psychotropic medication:**
  - i. Mass. G.L. ch. 111 § 72BB (effective 7/1/14) requires documentation of informed consent prior

to the administration of psychotropic medications in long-term care facilities.

- ii. See DPH Circular Letter: DHCQ 17-2-699, dated 2/1/17. which:
  - o Summarizes the law.
  - o Lists many, but not all, covered psychotropic and antipsychotic medications.
  - o Requires an informed consent form:
    - Prior to administration of medication
    - Anytime a dosage range has changed beyond what a resident or authorized person has consented
    - At least yearly
- iii. Provides a good summary of when an agent under a health care proxy can consent to administration of antipsychotics without court approval.

#### **D. MEDICAID REGULATIONS (MASSHEALTH)**

To be certified for participation in MassHealth and Medicare programs, a nursing home facility must also follow regulations promulgated by MassHealth.<sup>32</sup> Among other things, these regulations include transfer and discharge provisions, bed hold rights and the right to request a fair hearing in certain circumstances. Otherwise, the nursing home will not be reimbursed for any services the nursing home provides to MassHealth- or Medicare-eligible residents.<sup>33</sup>

#### **E. ATTORNEY GENERAL'S REGULATIONS – UNFAIR AND DECEPTIVE PRACTICES**

Nursing home facilities must also follow the Attorney General's Office regulations, which state that it will be considered an "unfair and deceptive" act, in violation of Mass. G.L. ch. 93A, for a nursing home to fail to comply with any federal or state statute or regulation protective of resident rights, or for a nursing home to fail to disclose the policies of the facility to a resident or prospective resident.<sup>34</sup> Further, a nursing home will be in violation of Chapter 93A if it discriminates against a Medicaid-eligible resident on the basis of that resident's source of payment for nursing home services.<sup>35</sup>

1. **Prohibit waiving liability:** The Attorney General's regulations also prohibit nursing homes from requiring residents to have a third-party guarantor, or requiring residents to waive the facility's liability for personal injury or loss of personal property.<sup>36</sup>
2. **Prohibit limiting choice of physician:** Nursing homes may not limit a resident's choice of physician or, for that matter, a resident's choice of pharmacy.<sup>37</sup>
3. **Prohibit non-refundable deposits:** Nursing home facilities cannot require residents to pay a non-refundable deposit.<sup>38</sup>
4. **Privacy rights:** Other Chapter 93A violations include a nursing home's refusal to permit a resident to have privacy during medical treatment or other activities of daily living, or refusal to allow a resident to live in the same unit with their spouse, if both consent.<sup>39</sup>
5. **Demand letter:** The Attorney General's regulations include other provisions by which nursing homes must operate in order to prevent liability. The consumer protection statute enables an aggrieved consumer to seek a non-judicial remedy by writing a consumer demand letter describing the unfair or deceptive act(s) or practice(s) and the relief sought, and provides a mechanism for suing a facility and collecting damages and possibly attorneys' fees should that be necessary.

#### **F. LONG-TERM CARE OMBUDSMAN PROGRAM**

The Long-Term Care (LTC) Ombudsman Program, previously administered by the Executive Office of Elder Affairs (EOEA), is now administered by the Executive Office of Health and Human Services (EO-HHS). The State LTC Ombudsman oversees a network of staff and volunteer visiting ombudsmen whose job it is to help resolve problems related to the health, welfare and rights of individuals living in nursing homes, rest homes and assisted living residences.

1. **Visiting facilities:** Visiting facilities on a regular basis, ombudsmen offer confidentiality and a way for residents to voice their complaints and work toward resolution with staff.
2. **Facilities must post notice:** Each facility is required to post, in a conspicuous location, the name and contact information of the visiting ombudsman assigned to that facility. To contact an assisted living ombudsman, you may call (617) 222-7495.

## G. ASSISTED LIVING RESIDENCES (ALRS)

### 1. Regulations

- a. **EOEA certifies all ALRs:** The EOEA certifies all assisted living residences (ALRs) in Massachusetts.<sup>40</sup> ALRs are not licensed facilities and are not subject to the same type of government oversight as nursing homes or other licensed health care facilities. Regulation of ALRs is based on state law, as there is no federal regulatory authority. As a result, residences and the regulation of ALRs differ from state to state.
  - b. **Type of units required:** In Massachusetts an ALR must provide only single or double living units with lockable doors and a kitchenette within the unit or access to cooking facilities.<sup>41</sup> Any newly constructed ALR must provide a full bathroom for each unit, while existing ALRs must provide, at minimum, a private half-bathroom.<sup>42</sup>
  - c. **Individual service plans:** After evaluation of eligibility and assessment of appropriateness of assisted living services for an older adult, the older adult should receive an individualized service plan that sets out the services provided, who will provide them, how often and for how long the services will be provided, the payment terms and reimbursement source for such services, the way the residence will provide for the presence of 24-hour on-site staff capability, and information regarding self-administered medication management.<sup>43</sup>
  - d. **Rights and responsibilities:** In addition to a service plan, each resident and sponsor of the ALR must execute a written agreement setting out the responsibilities and rights of the resident and sponsor with regard to the charges for services, a grievance procedure and termination conditions.<sup>44</sup> Effective Jan. 1, 2019, all assisted living residency agreements must include a cover sheet summarizing the important provisions of the agreement, and the resident or legal representative must sign the form, which must be retained in the resident's record.<sup>45</sup> See cover sheet attached in Appendix.
2. **Skilled Care in Assisted Living:** During the COVID-19 emergency, and continuing until March 31, 2025, ALRs were allowed to provide skilled care in certain circumstances on a temporary basis.<sup>46</sup> Effective Dec. 5, 2024, the omnibus long-term care legislation allows ALRs to provide "basic health services" on a permanent basis.<sup>47</sup>
    - a. **Certification to Provide Basic Health Services.** An ALR must receive specific certification from EOEA to provide such basic health services. EOEA, in consultation with DPH, will establish operating plan requirements for ALRs that opt to provide basic health services, including staff access to an LPN or RN for consultation at all times.
    - b. **New Legal Provisions.** The new law specifically states that the nurse need not be on the premises. The new law permits qualified ALR employees or qualified third-party providers, subject to a written care order, to administer the following services: injections, application or replacement of simple non-sterile dressings; the management of oxygen; specimen collection and the completion of a home diagnostic test, including warfarin, prothrombin or international normalized ratio testing and glucose testing; and ointments or drops.
    - c. **Additional Fees Permitted.** ALRs that choose to offer basic health services may charge additional fees to residents for such services.
    - d. **All Basic Health Services Must Be Offered.** Any ALR that provides basic health services must provide all of the basic health services listed.

e. **Limited MassHealth Coverage for Skilled Care in an ALR.** As a result of the new legislation, residents who require long-term care services may be able to obtain that level of care in an ALR. However, unlike nursing homes, MassHealth (Medicaid) does not currently cover ALR care except in limited circumstances.

3. **Required Disclosures:** The new long-term care legislation expands the disclosures required of ALR applicants for initial certification or renewal. ALRs shall disclose to EOEa the name and address of each officer, director, trustee and limited partner or shareholder with not less than 5% percent interest in the ALR, and any history of enforcement actions. In addition, ALRs shall annually provide a statement prepared by a CPA or comparable reviewer to show whether the residence is fiscally sound.

#### 4. **Assisted Living Resident Rights**

Massachusetts law specifies that a resident of an assisted living residence has the right:

- a. To live in a decent, safe and habitable environment;
- b. To be treated with consideration and respect;
- c. To have one's personal dignity and privacy observed;
- d. To retain and use personal property in one's unit;
- e. To communicate privately and without restriction;
- f. To contract or engage with health care professionals in one's unit as needed;
- g. To engage in community services and activities as one chooses;
- h. To manage one's own financial affairs;
- i. To present grievances and recommendations without reprisal;
- j. To have all of one's records kept confidential;
- k. To have privacy during medical treatment or other services;
- l. To have reasonable requests responded to promptly and adequately; and
- m. To be free from involuntary "discharge" or eviction without judicial process (summary process eviction proceedings).<sup>48</sup>

It is important to note that because assisted living is a residential model, residents have rights as tenants required under landlord/tenant laws.<sup>49</sup>

ALR residents should not give up their legal rights. See "Arbitration" information in the earlier Continuum of Care section. The Attorney General's recently formed Elder Justice Unit is in the process of drafting consumer protections regulations specific to the rights of ALR residents an Elder Justice unit and has announced its intention to promulgate regulations specific to the rights of ALR residents.

#### 5. **Assisted Living Ombudsman Program**

- a. **Definition:** The Assisted Living Ombudsman Program has been expanded and combined with the Long-Term Care Ombudsman Program, now housed under the EOHHS. In the case of a complaint or violation, a resident, the family member of a resident, or the representative of a resident may contact a statewide ombudsman.
- b. **Right to enter:** The ombudsman will enter the ALR to review and examine the situation.<sup>50</sup> In order to maintain certification, each assisted living facility must comply with the Ombudsman Program and facilitate the ombudsman's right to enter and investigate the residence.<sup>51</sup>
- c. **Mediation:** The assisted living ombudsman acts as a mediator and attempts to resolve problems or conflicts that arise between an ALR and one or more of its residents. To contact an assisted living ombudsman, you may call (617) 222-7495.

d. **Enforcement:**

- a. **EOEA complaint.** In addition to contacting the Ombudsman Program or an attorney, residents can file a complaint with the EOEA or the Attorney General's Office.
- b. **Unfair and deceptive acts.** The Attorney General's regulations provide a mechanism for consumers to pursue complaints based on unfair or deceptive practices, which include disputes regarding the provision of services. See 940 CMR 3.01, 3.03, 3.05, 3.16 and 3.17.
- c. The new long-term care bill establishes penalties that EOEA can impose upon an ALR that provides basic health services without the requisite certification. Fines are no more than \$1,000 per day.

## H. CONTINUING CARE RETIREMENT COMMUNITY (CCRC)

### 1. Oversight

EOEA compiles information about CCRCs in Massachusetts pursuant to Mass. G.L. ch. 93, § 76. The statute sets out disclosure requirements regarding the contractual rights of the parties.

2. **No oversight unless part of CCRC licensed by DPH:** There are no regulations governing CCRCs.

## I. CONSUMER RESOURCES

If you are facing neglect, abuse, an illegal discharge or eviction, or any other consumer issue in long-term care or assisted living, it is important to protect your rights and build a record with the public agencies charged with long-term care oversight.

### Consumer Organizations

- Dignity Alliance Massachusetts: [www.dignityalliancema.org](http://www.dignityalliancema.org)
- Massachusetts Advocates for Nursing Home Reform (MANHR): [www.manhr.org](http://www.manhr.org)
- National Consumer Voice for Quality Long-Term Care: [theconsumervoice.org/home](http://theconsumervoice.org/home)
- Justice In Aging: <https://justiceinaging.org/our-work/healthcare/long-term-services-and-supports/nursing-facilities>
- Long Term Care Community Coalition (New York-based): <https://nursinghome411.org>
- Long-Term Care Ombudsman Program: Phone: (617) 222-7495
- The LTC Ombudsman Program assigns an ombudsman to every nursing home in the state, and every area has an assisted living ombudsman program. They can be helpful in resolving consumer complaints.
- Website: [www.mass.gov/orgs/massachusetts-long-term-care-ombudsman-program](http://www.mass.gov/orgs/massachusetts-long-term-care-ombudsman-program)
- List of local Nursing Home and Rest Home Ombudsman Programs: [www.mass.gov/doc/nursing-rest-home-ombudsman-local-contact-information/download](http://www.mass.gov/doc/nursing-rest-home-ombudsman-local-contact-information/download)
- List of local Assisted Living Ombudsman Programs: [www.mass.gov/doc/assisted-living-ombudsman-local-contact-information/download](http://www.mass.gov/doc/assisted-living-ombudsman-local-contact-information/download)
- To find a local legal services program: <https://masslrf.org/en/home/>
- To find a local elder law attorney: <https://massnaela.com/>
- To find a care manager <https://www.alcanewengland.org/>

### To File a Complaint

- Department of Public Health

File a complaint with the Department of Public Health (DPH) — for Nursing Homes/Health Care Facilities

DPH website: [www.mass.gov/nursing-home-consumer-information](http://www.mass.gov/nursing-home-consumer-information)

- DPH complaint form: [www.mass.gov/how-to/file-a-complaint-regarding-a-nursing-home-or-other-health-care-facility](http://www.mass.gov/how-to/file-a-complaint-regarding-a-nursing-home-or-other-health-care-facility)

The complaint form is on the website, but it can't be filed online — it must be faxed or mailed in. Consumers or their authorized representatives should send the complaint form (with HIPAA release form, if applicable) by:

**Mail:** Division of Health Care Facility Licensure and Certification Complaint Intake Unit  
67 Forest St., Marlborough, MA 01752

**Fax:** (617) 753-8165

**Phone:** (800) 462-5540

(24-hour complaint line for those unable to file a written complaint)

- Executive Office of Elder Affairs (EOEA)  
File a complaint with EOEA for Assisted Living Residences:  
EOEA form: <https://www.mass.gov/how-to/file-a-massachusetts-assisted-living-residence-alr-complaint-form>

- **Attorney General's Office**  
One Ashburton Place, Boston, MA 02108  
Deputy Chief

The Attorney General's regulations provide that any violation of nursing home residents' rights is a per se violation of the state consumer protection statute, known as Chapter 93A. ALR residents can also claim protection under Chapter 93A.

- Send the demand letter to the facility, with copies to:

Mary Freeley, Esq., Deputy Chief  
Health Care & Fair Competition Bureau  
Elder Justice Unit  
Office of the Attorney General  
Consumer Protection Division  
One Ashburton Place, Boston, MA 02108

- Consumer Protection Hotline: (617) 727-8400  
Email: [ago@state.ma.us](mailto:ago@state.ma.us)  
Fax: (855) 237-5130

- Ombudsman's Office

File a complaint with the Ombudsman's Office for nursing home and assisted living issues.  
Carolyn Fenn, State Long-Term Care Ombudsman  
One Ashburton Place, Fifth Floor, Boston, MA 02108  
Phone: (617) 222-7495

Steven Ellsweig, ALR Ombudsman Operations Manager (for Assisted Living Residences)  
One Ashburton Place, Fifth Floor, Boston, MA 02108  
Phone: (617) 222-7495

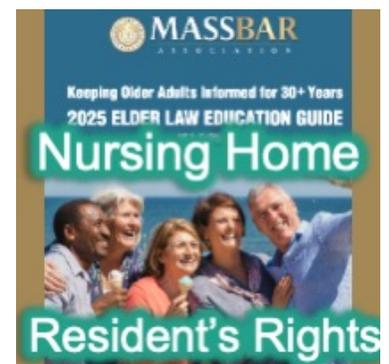
- **Licensure and Certification**

File a complaint with the Division of Licensure and Certification  
Division of Health Care Facility Licensure and Certification  
Complaint Intake Unit  
67 Forest St., Marlborough, MA 01752

- **Elder Abuse and Neglect**  
File an Elder Abuse and Neglect Report (includes financial abuse)  
Elder Abuse Hotline: (800) 922-2275

1. MASS. G.L. ch. 19D § 1.
2. *Id.*
3. *Id.*
4. MASS. G.L. ch. 93 § 76.
5. *Id.*
6. <https://www.medicaid.gov/medicaid/long-term-services-supports/institutional-long-term-care/nursing-facilities/index.html>.
7. See 940 C.M.R. § 4.03 and MASS G.L. 151B, § 4.
8. 105 C.M.R. § 150.022 – 150.029 Dementia Special Care Units.
9. *Id.*
10. MASS. G.L. ch. 111, § 70E.
11. 940 C.M.R. §§ 4.06- 4.07.
12. 42 C.F.R. § 483.70(n).
13. Nursing Home Reform Law, 42 U.S.C. §§ 1395i-3(a)-(h) and 1396r(a)-(h).
14. 42 C.F.R. § 483.15(c)(1).
15. 940 C.M.R. § 4.09(2).
16. 42 C.F.R. § 483.15(c)(1).
17. 42 C.F.R. § 483.15(c)(3).
18. 42 C.F.R. § 483.15(c)(3).
19. 42 C.F.R. § 483.15(e)(1)(i).
20. *Id.*
21. *Id.*
22. 42 C.F.R. § 483.10(e)(6), 940 C.M.R. § 4.06(11).
23. 42 C.F.R. § 483.15(c)(1) and (2).
24. 42 C.F.R. § 483.15(e)(1)(i).
25. 42 C.F.R. § 483.15(e)(1), See 130 C.M.R. § 456.429, 130 C.M.R. § 610.028(D); and *Brunelle v. DMA* (Mass. Superior Ct.).
26. MASS. G.L. ch. 111, § 71.
27. *Id.*
28. *Id.* § 72.
29. MASS. G.L. ch. 111, § 72.
30. *Id.*
31. *Id.*
32. 130 C.M.R. § 456.406.
33. *Id.*
34. *Id.*
35. 940 C.M.R. § 4.03.
36. 940 C.M.R. § 4.04.
37. *Id.*
38. *Id.*
39. 940 C.M.R. § 4.06.
40. 651 C.M.R. § 12.03.
41. 651 C.M.R. § 12.04.
42. *Id.*
43. *Id.*
44. 651 C.M.R. § 12.08.
45. 651 C.M.R. § 12.08(4).
46. Section 13 of Chapter 88 of the Acts of 2024, Section 39 of Chapter 2 of the Acts of 2023, and Section 23 of Chapter 20 of the Acts of 2021.
47. Chapter 197 of the Acts of 2024.
48. 651 C.M.R. § 12.08.
49. M.G.L. c. 186 and c. 239, 940 C.M.R. § 3.17.
50. 651 C.M.R. § 13.00.
51. *Id.* § 13.03.

**Return to  
MassHealthHELP.com**





## EXECUTIVE OFFICE OF ELDER AFFAIRS

Assisted Living Certification Unit  
[www.mass.gov/elder](http://www.mass.gov/elder)

Assisted Living Residence (ALR): \_\_\_\_\_

### Residency Agreement Cover Sheet: (651 CMR 12.08(4))

Initialing the box next to each section header confirms that the Resident or legal representative has read each statement listed on this form and has been given the opportunity to ask questions.

**CARE:**

- \_\_\_ An Assisted Living Residence (ALR) is not a nursing home.
- \_\_\_ Nurses are not required to be on duty and in the building 24 hours per day/7 days per week. Inquire with the ALR how often and when nurses are in the building.
- \_\_\_ Residents cannot receive skilled nursing care from ALR employees.
- \_\_\_ You may be required to provide and pay for additional private care if the ALR determines that your care needs exceed the level of care available at the ALR.

**RESIDENCY:**

- \_\_\_ A signed residency agreement is a contract between you and the ALR; read it carefully before signing. **Note:** If additional services are subsequently required, your monthly costs may increase.
- \_\_\_ Eviction from an ALR must comply with the provisions of landlord/tenant law, M.G.L. c. 186 or c. 239, and include all notices required by law.
- \_\_\_ The ALR cannot prevent you from returning to the ALR after a hospital or rehab stay; however, if your care needs exceed the ALR's capacity for services, you may be required to hire private care staff to meet your care needs.
- \_\_\_ Your resident agreement may allow the ALR to terminate your residency if it determines that you are no longer suitable to live there; if this is the case, the Residence must provide a \_\_\_ day notice prior to requiring you to leave.
- \_\_\_ Signing a residency agreement that includes an arbitration clause or signing a separate arbitration agreement may prohibit use of the court system to resolve disputes and instead require you to present your case to an mediator.

**COST:**

- \_\_\_ You should assess your finances to determine how long you can afford to stay at the ALR before making a commitment.
- \_\_\_ If you deplete your assets (run out of money) and are unable to afford the cost of the ALR in the future, the ALR may require you to move.
- \_\_\_ The ALR can change your monthly fees with \_\_\_ days' notice.
- \_\_\_ Your service plan can change based on the ALR's reassessment of your needs. Changes to your service plan may change your monthly costs.
- \_\_\_ If you fail to provide notice of termination of Residency in accordance with the terms of the Residency Agreement, you may incur additional charges.

**RESIDENT RIGHT**

\_\_\_ Residents may file a complaint at any time with the Assisted Living Residence Ombudsman or the Assisted Living Residence Certification Unit at Executive Office of Elder Affairs by calling (617) 727-7750 or 1-800-AGE-INFO (1-800-243-4636).

**Required Signatures**

\_\_\_\_\_ Date: \_\_\_\_\_  
**Resident or Legal Representative**

\_\_\_\_\_ Date: \_\_\_\_\_  
**ALR Witness: Name and Position**

**A copy of this form should be provided to both parties after signing.  
The ALR's copy should be maintained in the resident record.**