

**Resident Rights,  
Incident Reports & Progress Notes,  
Environmental Hazards,  
Personal Supervision,  
Standards of Care  
And Staffing**

This review will include certain sections of the regulations concerning resident rights (including training elsewhere) on our policy regarding Abuse, Neglect, Misappropriation and Exploitation, and on Mandatory Reporting and Confidentiality.

Resident rights and standards of care form the basis of appropriate documentation, explanation and intervention both in cases of significant incidents of concern and for at least monthly, and as needed, progress notes substantively reflecting the regulatory standards of care.

*From: Regulations Governing the Licensing and Functioning of Assisted Housing Programs, Level IV Residential Care Facilities, Part of 10-144, Chapter 113.*

The topics covered reference those in the regulations, but content has been modified to be brief and contain the most pertinent materials for purposes of this training. Ask questions along the way, as you probably have experienced much that is relevant to these areas of residential care already!

## **Section 5 – Resident Rights**

- 5.1 Resident rights.** The facility shall encourage residents to exercise their rights, to age in place and make informed choices.
- 5.2 Freedom of choice of provider.** For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice.
- 5.3 Rights regarding transfer and discharge.** A resident shall not be transferred or discharged involuntarily, except for the following reasons:
  - 5.3.1** When a resident has violated the admission contract obligations;
  - 5.3.2** A resident’s behavior or condition constitutes a direct threat to the health or safety of others;
  - 5.3.3** A resident’s intentional behavior has resulted in substantial physical damage to the property of the facility or the property of others who live or work there;
  - 5.3.4** A resident has not paid for his/her residential services;
  - 5.3.5** When the facility cannot meet the needs of the resident.
- 5.4 Transfer or discharge.** When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. No involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Each notice of discharge must be written and include the following:
  - 5.4.1** The reason and date for the transfer or discharge;
  - 5.4.3** Notice of the resident’s right to appeal the transfer, together with agency contacts.
  - 5.4.6** The resident’s right to be represented by legal counsel, a relative, friend or other spokesperson.
- 5.5 Emergency transfer or discharge.** When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. Transfer to an acute hospital is not considered a placement.
- 5.7 Assistance in finding alternative placement.** Residents who choose to relocate shall be offered assistance in doing so. No advance notice is required.
- 5.8 Right to communicate grievances and recommend changes.** Residents can exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to anyone of their choice, without interference or reprisal. All

grievances shall be documented. The procedure shall include a written response to the complaint. These documents shall be maintained and available for review upon request by the Department.

- 5.9 Right to manage financial affairs.** Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident.
- 5.8.1 Right to freedom from abuse, neglect or exploitation.**
- 5.11 Rights regarding restraints.** There shall be no use of physical, chemical, psychological or mechanical restraints.
- 5.11.1** Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall.
- 5.12 Right to confidentiality.** Residents' records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. **The licensee and employees shall have access to confidential information resident only to the extent needed to carry out the requirements for care.** The written consent of the resident or his/her legal representative shall be required for release of information to any other. Records shall not be removed from the facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals, groups, or categories with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc).
- 5.13 Right to refuse to perform services for the facility.**
- 5.14 Right to privacy and respect, and to communicate privately with persons of choice.**
- 5.16 Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others.
- 5.17 Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits.
- 5.19 Right to be informed of services provided by the facility..** Residents shall be fully informed of items or services which are included in the rate they pay.
- 5.20 Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident's duly authorized licensed practitioner, caseworker or another in order to encourage residents to receive necessary services.
- 5.21 Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation.

**5.22 Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department.

**5.23 Notification of Residents Rights.** The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights.

**5.25 Mandatory report of rights violations.** Any person or professional who provides health care, social services or mental health services or who administers a long term care facility or program who has reasonable cause to suspect that the regulations pertaining to residents' rights or the conduct of resident care have been violated, shall immediately report the alleged violation to the Department of Health and Human Services (800 383-2441) and to one or more of the following:

Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. §19501 through §19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. §5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. §1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. §3470 through §3487.

**Reporting suspected abuse, neglect and exploitation is mandatory in all cases.**

Documentation shall be maintained in the facility that a report has been made.

Mandated reporters shall contact the Department of Health and Human Services (**800 383-2441**) immediately after receiving and/or obtaining information about any rights violations.

**5.26 Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to reside in an assisted living program, the provider shall make reasonable modification of the existing premises, and make reasonable accommodation in regulations, policies, practices or services.

**5.26.1** The provider is not required to make the modification at his/her own expense, if it imposes a financial burden.

**5.27 Right of action.** In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court.

**5.28 Right to appeal an involuntary transfer or discharge.** The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge if appealed within five (5) calendar days of receipt of a written notice of discharge. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision.

**5.30 Resident councils**

**5.30.1** Residents of assisted living programs and residential care facilities have the right to establish a resident council.

**5.30.3** The council has the following rights: To know their rights, obtain policies and procedures, be informed of their rights, to make recommendations for improvement and receive a written response. And to disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request.

**5.31 Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies.

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## Section 11 – Administrative and Resident Records

**11.1.7 Incident reports.** An incident report shall be completed for any resident who has sustained or caused a fall, injury or accident in the facility, while being transported by the facility, or in an activity supervised by facility staff, who unsafely wanders from the facility, who is involved in an altercation with another resident, who has a medication reaction, or when an error is made in the documentation or administration of medication.

The report shall describe the incident and indicate the extent of the injury or reaction and necessary treatment. The dispensing pharmacy shall be consulted regarding incidents involving medications, in order to assist in assessing adverse drug reaction, drug-drug interaction, drug-food interaction and allergies/sensitivities. If, in the opinion of the administrator or person in charge, the incident is not serious enough to call an examining duly authorized licensed practitioner, an incident report shall still be recorded in the resident's record. **The administrator shall initial the record within seventy-two (72) hours.**

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## Section 12 – Standards of Resident Care

- 12.1 General rule.** Residents shall have the opportunity to receive individualized services that help them age in place, function optimally in the facility and in the community, engage in constructive activity, and manage their health conditions. The facility will assure, as possible, that residents' needs and choices will be accommodated. This shall be evidenced in the assessment of individual needs, development and implementation of individual service plans and in regular progress notes.
- 12.2 Resident assessment.** Residents shall be assessed within 30 calendar days of admission and reassessed annually or if there is a significant change in a resident's condition, to determine their abilities and need for services.
- 12.3 Service plan.** A service plan shall be developed and implemented within thirty (30) calendar days of admission for each resident based upon the findings of the assessment (*See Service Plan Training for this reference and confirmation of read*).
- 12.4 Progress notes.** The facility shall maintain ongoing progress notes at least monthly, on implementation of the service plan and for any significant changes in the resident's life, including any increases or declines in the resident's physical and mental functioning that should be considered at the time of reassessment or adjustment in the service plan.

Other Standards of care, including Activities and Dietary, are included in Section 12 as well. Choice, Activities, and Dietary offerings and appropriateness are covered there. Importantly is this subsection related to medical care specifically:

**12.10 Medical and health care.** The facility is responsible for promptly coordinating and assisting in accessing appropriate services for residents. The health care of every resident shall be under the supervision of a duly authorized licensed practitioner.

**12.14 Refusal of care or treatment.** In the event that a resident refuses necessary care or treatment, the facility shall document reasonable efforts made to consult with the resident's licensed medical professional, the registered nurse consultant, caseworker or other appropriate individuals in order to ensure that residents receive necessary services.

Of course, refusal of care requires provider communication and, specifically for our purposes here, progress notes entry and appropriate MAR documentation.

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## Section 2 – Definitions (esp. Environmental Hazards, Standards of Care)

The regulations define “personal supervision” and “protection from environmental hazards” most clearly in the section entitled ‘Definitions.’ Under the definition of Assisted Housing Services, of which Residential Care is a part, these discussions can be found. Other references in the regulations assume the understanding of these items as laid out in this area. Activities and Dietary are also broadly discussed in this area.

**2.2 “Activities of Daily Living (hereinafter ADLs)”** means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, locomotion, dressing, eating, toileting, bathing and personal hygiene.

**2.28 “Instrumental Activities of Daily Living (hereinafter IADLs)”** includes, but is not limited to, preparing or receiving of a main meal, taking medication, using the telephone, handling finances, banking, shopping, routine housework, laundry and getting to appointments.

\*\*\* Daily ADL documentation is important, as it reflects change in dependency, in turn a possible change in the Service Plan and supportive service and attention to the resident. Such documentation is the responsibility of the personal care attendant, and is to be documented daily. IADLs are noted in progress notes as relevant, but are not documented as are ADLs.

**2.9 “Assisted Housing Services”** means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, **personal supervision, protection from environmental hazards**, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:

**2.9.1 Personal supervision**, meaning awareness of a resident's general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident's functioning or behavior to enhance his or her health or safety or the health or safety of others;

**2.9.2 Protection from environmental hazards**, meaning mitigation of risk in the physical environment to prevent unnecessary injury or accident;

- 2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;
  - 2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents' interests or which stimulate social interaction, both in individual and group settings;
  - 2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident's minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;
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### Section 13 - Staffing

- 13.1 **General requirements.** Minimum staffing shall be adequate to implement service plans, and to provide a safe setting. The Department reserves the right to require additional personnel or to modify the requirements of this section due to the level of supervision and care required by the residents, the size of the facility, and distinct parts or distribution of residents throughout the physical plant. It is further required that all regular staff have in-service training at least annually, in areas related to the specific needs of the residents served.
- 13.2 **Staff requirements in facilities with ten (10) or fewer beds.**
  - 13.2.1 Facilities with ten (10) or fewer beds are required to have, at a minimum, one (1) **responsible adult** who is at least eighteen (18) years of age, **present at all times** whenever residents are present, **to perform resident care** and provide supervision of residents.
  - 13.2.2 The name, address and telephone number of all persons, other than the owner or administrator, who provide care and supervision of residents shall be available to the Department upon request.
- 13.5 **Employee records.** Facilities must maintain individual records on all employees. Records shall contain the initial date of employment, date of birth, home address and telephone number, experience and qualifications, social security number, copy of current occupational license (if applicable), references and reference check information, job description, record of participation in in-service, orientation or other training programs, results of annual personnel evaluations, disciplinary actions, illness and injury records and date of and reason for termination. Records may be computerized.
- 13.6 **Staff training, education and qualifications.**
  - 13.6.1 Within one hundred twenty (120) days of hiring, all staff, other than CNA's and licensed professional staff, shall successfully complete a certification course approved by the Department.
  - 13.6.3 **Any person working in the facility must demonstrate the following:**

**13.6.3.1** Conduct which demonstrates an understanding of, and compliance with, residents' rights;

**13.6.3.2** The ability and willingness to comply with all applicable laws and regulations.

**13.6.3.3** The ability to provide safe and compassionate services; and

**13.6.3.4** A history of honest and lawful conduct.

**13.7 Shared staffing.** Staff may be shared with other levels of assisted housing programs and nursing facilities on the same premises as long as there is a clear, documented audit trail and the staffing in the facility remains adequate to meet the needs of residents. Staffing to be shared may be based upon the average number of hours used per week or month within the facility.



**ATTESTATION**

**Concerning: Resident Rights, Confidentiality, Incident Reports, Progress Notes, Environmental Hazards, Personal Supervision, Standards of Care and Staffing**

I have attended a training in which the topics of resident rights, confidentiality, incident reports, progress notes, environmental hazards, personal supervision, standards of care and staffing have been reviewed. I have had the opportunity to clarify any questions I may have had at the time, and as a result understand my job requirements in these regulatory areas.

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Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trainer Signature

\_\_\_\_\_  
Date