

# Attorney General Regulations

## 940 CMR 4.00: Long Term Care Facilities

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The Attorney General of the Commonwealth of Massachusetts promulgates 940 CMR 4.00 pursuant to authority granted to him under M.G.L. c. 93A, § 2(c). 940 CMR 4.00 is designed to promote the protection, comfort, health and well-being of consumers of services provided by long-term care facilities, to be consistent with existing legal standards, and to be as responsive as possible to the constraints and administrative realities under which long-term care facilities operate.

940 CMR defines certain unfair or deceptive acts or practices. However, 940 CMR is not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A § 2(a) and 940 CMR does not legitimize acts not specifically prohibited by 940 CMR 4.00. For example, long-term care residents should be protected against all forms of discrimination, including, but not limited to, discrimination on the basis of disability or source of payment. 940 CMR 4.00 is designed to supplement existing statutes and regulations; the Attorney General plans to work and cooperate with other state and federal agencies in enforcing 940 CMR 4.00 and other regulations.

### 4.01: Definitions

**Additional Services:** services provided by a long-term care facility that are not included in the basic *per diem* rate or are not included under Titles XVIII or XIX of the Social Security Act.

**Administrator:** the person charged with the general administration of a nursing home, rest home, or other long-term care facility, and his/her agents or employees, as further defined in 105 CMR 150.000: Licensing of Long Term Care Facilities.

**Clear and Conspicuous Type:** shall mean printed typeface no smaller than 12 point print.

**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 long-term care facility who is in charge of the facility's medical or nursing services at the time that the situation giving rise to the emergency occurs or is about to occur.

**Facility:** a long-term care facility as defined in 940 CMR 4.01(9).

**Legal Representative:** shall mean, for any resident adjudged incompetent under the laws of the Commonwealth, the person duly appointed by a court of competent jurisdiction to act on the resident's behalf, and, for any resident who has not been adjudged incompetent by a state court, any legal-surrogate designated in accordance with state law.

**Licensee:** any person, corporation, or other entity holding at least a 10% ownership interest in a facility that is licensed by the Department of Public Health as a long-term care facility and his/her or its agents or employees.

**Long-Term Care Facility:** any institution or distinct part of an institution, whether conducted for charity or profit, which is advertised, announced or maintained for the express or implied purpose of providing three or more individuals admitted thereto with long-term resident, nursing or convalescent care, supervision and care incident to old age for ambulatory persons, or retirement home care for elderly persons; the term long-term care facility shall include but not be limited to residential care facilities, convalescent or rest homes, infirmaries maintained in towns, and charitable homes for the aged; an institution licensed by the Department of Public Health to provide chronic disease or rehabilitative services under M.G.L. c. 111, § 51 is not a "long term care facility" hereunder except, however, if and when any such institution provides or has provided chronic disease or rehabilitative care and services to one or more individuals for a period of 60 days or longer, such institution shall be deemed a *long term care facility* hereunder with respect only to such individual or individuals residing in it for 60 days or longer and only for the purpose of affording such individual or individuals the protections set forth in 940 CMR 4.06(1), (3)(d), (4) through (6), (9), (10), (12) through (21); 4.07(1) through (3), (8), (9), (11), (12); 4.08(2) through (13), (15) through (17); and 4.09(6) through (8).

**Private Facility:** a long-term care facility that admits, or provides services to, only private or self paying residents and does not provide services pursuant to, or have any contract with Medicare, Medicaid, SSI, Veteran's Benefit or any other public benefit program.

**Private Resident:** a resident of a long-term care facility whose stay in the facility at any given time is not paid for, either in whole or in part, by public funds pursuant to the Social Security Act (Medicaid or Medicare), SSI, Veteran's Benefit, or any other public benefit program.

**Resident:** any individual or patient residing or receiving care in a long-term care facility; except, however, any individual or patient residing or receiving care in an institution licensed by the Department of Public Health under M.G.L. c. 111, § 51 to provide chronic disease or rehabilitative services for a period of 60 days or longer shall be deemed a "resident" and shall be entitled to the protections afforded by 940 CMR 4.06(1), (3)(d), (4) through (6), (9), (10),

(12) though (21); 4.07(1) through (3), (8), (9), (11), (12); 4.08(2) through (13), (15) through (17); and 4.09(6) through (8).

**Social Security Act:** Titles XVIII and XIX of the Social Security Act.

**Third Party:** shall mean a licensee or administrator, employee or agent of the licensee or administrator, next of kin, son, daughter, granddaughter, grandson, niece, nephew, social/case worker, or duly designated agent of the Department of Public Health, the Department of Mental Retardation, or the State Long-Term Care Ombudsman.

**Treatment:** any medication, drug, test or procedure conducted or administered for the purpose of diagnosing or treating a physical or mental illness or condition.

**Written Acknowledgment:** a signed statement by a resident or his/her legal representative, preserved in the resident's personal file, stating that he/she has received a copy of the documents required to be tendered to him/her; if a resident is unable or unwilling to sign his/her name, the licensee or administrator 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 ability or unwillingness to sign his/her 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 his/her name.

**Written Authorization:** a written statement, signed by the resident or his/her legal representative, in which the resident authorizes the licensee or administrator, the resident's legal representative or a third party to perform certain specified acts on behalf of the resident; the authorization shall be dated and shall include:

- (a) the specific act or acts authorized by the resident;
- (b) the period of time that the resident authorizes the particular act or acts, if applicable; and
- (c) the name of the person to whom certain records or other information is authorized to be made available; if the resident is unable to sign his/her name, a licensee or administrator or a third party may satisfy the requirements of a written authorization by submitting a dated statement that contains the information required by 940 CMR 4.01(18)(a) through (c); the statement must also include the name and signature of the person to whom the resident made the oral authorization and the name and signature of a person who has witnessed the resident's oral authorization.

**Written Request:** a statement signed by the resident or his/her legal representative that states that the resident requests one or more specified services for a certain period of time; such a statement must include the charge for each such service; if a legal representative is not available to sign the statement and if the resident is unable to sign his/her name, a licensee or administrator may satisfy the requirements for a written request by placing in the resident's personal records a written and dated statement, signed by both the person receiving the request for the service or services and a witness to that request, that states:

- (a) the service or services requested by the resident;

- (b) the charge for such service or services, if any;
- (c) the period of time for which the resident has requested such service or services; and
- (d) that the resident was unable to sign his/her name to request such service or services and that his/her legal representative was not available to sign the written request.

## 4.02: Unfair or Deceptive Acts or Practices:

### General

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator:

- (1) to fail to comply with any existing state or federal statute, rule or regulation which provides protection to or for residents or prospective residents of long-term care facilities;
- (2) to fail or refuse to inform the resident, both orally and in writing, in clear and conspicuous type, in a language the resident understands, as evidenced by the resident's written acknowledgement, and to inform his/her legal representative or next of kin:
  - (a) that the facility has written policies, including, but not limited to, policies regarding the rights and responsibilities of residents; and
  - (b) the subject of each such policy;
- (3) to fail or refuse to furnish a copy of any policy referred to in 940 CMR 4.02(2), printed in clear and conspicuous type, to the resident and his/her legal representative or next of kin as evidenced by the resident's written acknowledgement; the disclosures required hereby shall be made no later than 30 days after the effective date of 940 CMR 4.00 for those residents then residing in the facility, and for new residents, at the time of their admission to the facility; disclosure shall also be made annually thereafter at such times as the policies are reissued or amended and upon request by the resident or his/her legal representative or next of kin at any time during the resident's stay in the facility;
- (4) to fail or refuse to inform the resident both orally and in writing, in clear and conspicuous type, in a language the resident understands, as evidenced by the resident's written acknowledgement, and his/her legal representative or next of kin that the Attorney General has promulgated regulations relating to the conduct of licensees and administrators, and to fail or refuse to furnish a copy of 940 CMR 4.00 printed in clear and conspicuous type, to any resident and his/her legal representative or next of kin, as evidenced by the resident's written acknowledgement; the disclosures required hereby in 940 CMR 4.02(3) shall be made within 30 days after the effective date of 940 CMR 4.00 for those residents then residing in the facility; for new residents, such disclosures shall be made at the time of their admission to the long-term care facility; disclosure to each resident shall also be made annually thereafter and at any time the resident makes a request for 940 CMR 4.00; in the case of a resident

adjudged incompetent, the facility may satisfy the requirements of 940 CMR 4.02(2) through (4) by making a reasonable effort to inform the resident of his/her rights under 940 CMR 4.00 and by satisfying the requirements pertaining to notification of his/her legal representative;

(5) to fail or refuse, at the time of admission and, again at the earliest date on which the facility has reason to believe that the resident may become eligible for the Massachusetts Medical Assistance Program (hereafter "Medicaid"), if later, to inform the resident, both orally and in writing, in a language the resident understands, and inform his/her legal representatives or next of kin, of the requirements and procedures for establishing eligibility for services provided by Medicaid, including the resident's right to complete a Division of Medical Assistance assessment of spousal assets form as of the date of admission; or to fail or refuse to provide a Division of Medical Assistance Medicaid assessment form and application form upon admission and again later, if requested by the resident, his/her legal representative or next of kin;

(6) to fail or refuse to post prominently and conspicuously a copy of 940 CMR 4.00 and a copy of the facility's written policies relating to the rights and responsibilities of residents, in each identifiable unit in the facility as defined in 105 CMR 150.000; such regulations and policies shall be printed in clear and conspicuous type;

(7) to fail or refuse to inform the resident, both orally and in writing, in clear and conspicuous type, in a language the resident understands, and to fail or refuse to inform his/her legal representative or next of kin upon the resident's admission and at the time of transfer, if any, of the duration of Medicaid's bed-hold policy and the facility's policy regarding medical, therapeutic and personal leaves of absence and the Medicaid requirement, in the event that any such leave exceeds the bed hold period, that the facility readmit the resident immediately to the first available bed in a semi-private room if the resident requires the facility's services;

(8) in the case of a private facility, to fail or refuse to disclose in writing to a resident and his/her legal representative or next of kin, that the resident may be transferred or discharged if the resident ceases to be a private resident; the disclosure required hereby in 940 CMR 4.02(9) shall be made at the time of the resident's admission to the facility, annually thereafter and upon request of the resident, his/her legal representative or next of kin;

(9) to fail or refuse to respond promptly and fully to all inquiries relating to any of the policies, regulations or procedures established by the facility which are made by a resident, his/her legal representative or next of kin at any time during the resident's stay in the facility.

### 4.03: Non-Discriminatory Access to Long-Term Care

It shall be an unfair and deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator of a long-term care facility that is a party to a Medicaid provider agreement:

(1) to discriminate against any Medicaid recipient or person eligible or soon-to-be-eligible to receive Medicaid benefits, who is seeking admission to the facility, on the basis of his/her current or anticipated source of payment;

(2) to require, directly or indirectly, any resident or applicant for admission to waive his/her rights to benefits under the Medicaid program. Examples of such impermissible conduct include, but are not limited to:

(a) requiring an applicant to agree to pay private rates for a specified period of time prior to applying for Medicaid benefits;

(b) charging, soliciting, accepting, or receiving, in addition to any amount otherwise required to be paid pursuant to the Medicaid program, any gift, money, donation, or other consideration either as a precondition of admitting or expediting the admission of a Medicaid eligible applicant to, or as requirement for a resident's continued stay in, the facility;

(3) to fail or refuse to provide an appropriate admission application form to each person, his/her legal representative or next of kin or to a third party authorized to act for the person seeking admission to a facility, immediately upon request, or, if the request is made in writing or by telephone, to mail such application form within two business days following receipt of the request therefor;

(4) to render or offer assistance in the preparation of applications or in any facet of the admission process to private pay applicants in a manner greater than that rendered or offered to Medicaid recipients;

(5) Nothing contained herein shall be construed to bar:

(a) any religious or denominational institution or organization established for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization from limiting admission to or giving preference to persons of the same religion or denomination, or from making such selection as is calculated by such organization to promote the religious principles for which it was established or is maintained, provided, however, that such admissions or preferences shall not be based on any qualified applicant's status or lack of status as a recipient or prospective recipient of Medicaid; or

(b) any organization operated for charitable purposes and within the constraints of an existing corporate charter pursuant to 26 U.S.C. § 501(c)(3), from limiting admission to or giving preference to certain qualified applicants in accordance with the provisions of said charter, provided, however, that such admissions or preferences shall not be based on any qualified applicant's status or lack of status as a recipient or prospective recipient of Medicaid.

## 4.04: Admission Contracts

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator:

(1) to require a resident or a prospective resident, his/her legal representative or next of kin, as a condition of admission, expedited admission, or continued stay in the facility, to provide a third party guarantee of payment to the facility;

(2) to require a resident or a prospective resident, his/her legal representative or next of kin, as a condition of admission, expedited admission, or continued stay in the facility, to designate a third party to be responsible for giving authorization and consent on behalf of any resident, unless such resident has been adjudged incompetent by a court of law; however, nothing in 940 CMR 4.04(1) and (2) should be construed to require that an applicant be admitted who has no source of payment;

(3) to require a resident or a prospective resident, his/her legal representative or next of kin, as a condition of admission, expedited admission, or continued stay in the facility, to agree to waive or limit the facility's liability for loss of personal property or any injury suffered as a result of negligence on the part of the administrator or of the facility's employees or agents;

(4) to require a resident or a prospective resident, his/her legal representative or next of kin, as a condition for admission, expedited admission, or continued stay in the facility, to agree to treatment by a physician chosen by the facility or otherwise to limit the resident's right to choose his/her attending physician;

(5) to require a resident or a prospective resident, his/her legal representative or next of kin, as a condition of admission, expedited admission, or continuing 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 his/her choice, provided that the prescription complies with all relevant regulations governing pharmacy labeling;

(6) to include, as part of the facility's admission contract, any documents printed

(a) in less than 12 point print, and

(b) other than in a language which the prospective resident understands;

(7) to require a resident or a prospective resident, his/her legal representative or next of kin, to agree, as a condition of admission, expedited admission, or continued stay in the facility, to pay attorney's fees or any other costs incurred in collecting payment from the resident;

(8) to require a resident or a prospective resident, his/her legal representative or next of kin, as a condition of admission, expedited admission, or continued stay in the facility at any time after admission, to waive any benefit or right conferred by any statute or regulation intended to provide protection to or for residents of any long-term care facility;

(9) without limiting the provisions of 940 CMR 4.05(10), to require a resident or a prospective resident, his/her legal representative or next of kin, as a condition for admission, expedited admission, or continued stay in the facility, to provide any non-refundable deposit.

## 4.05: Charges

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or administrator:

(1) to fail or refuse to inform a resident, both orally and in writing, in clear and conspicuous type, in a language the resident understands, and to fail or refuse to inform his/her legal representative or next of kin at the time of admission to the facility, and at least every year thereafter during the resident's stay, of any of the following:

(a) services available in the facility and charges for those services, including any charges for services not covered under Medicare and Medicaid or by the facility's *per diem* rate;

(b) the existing basic *per diem* rate, applicable to the resident, charged by the licensee and all the services included in that rate;

(c) except in the case of private residents, the services available to the resident that are covered by the Social Security Act, but that are not included in the basic *per diem* rate (e.g., telephone, television, personal clothing, *etc.*); however, such disclosures shall be made to each private resident at the time when he/she ceases to be a private resident;

(2) to fail or refuse to inform each resident, both orally and in writing, in clear and conspicuous type, in a language the resident understands, and to fail or refuse to inform his/her legal representative or next of kin when changes are made to the items and services specified in 940 CMR 4.05(1);

(3) to impose, seek to impose, or collect a charge in addition to the basic *per diem* rate for services included in the basic *per diem* rate;

(4) to charge, or collect payment from, a resident, his/her legal representative or next of kin for services covered by the Social Security Act for that resident;

(5) to fail or refuse to provide all the services included in the basic *per diem* rate, except those services not medically required by the resident which are included in the basic *per diem* rate;

(6) to charge for services not actually rendered to a resident, except that a licensee or administrator may charge for medical services included in the basic *per diem* rate that are not medically required by the resident during a particular billing period; or to fail to return to the resident, his/her legal representative, or, when appropriate, the resident's estate, any advance payments made for services not rendered as a result of the resident's death or transfer from the facility; however, the facility may require a private resident or a third party acting on his/her behalf to give two days advance notice of a voluntary transfer;

(7) to provide and charge for additional services, except for medical services required in an emergency, which are not included in the *per diem* rate, without prior written request for those services by the resident or his/her legal representative or next of kin;

(8) to fail or refuse to permit a resident, his/her legal representative or next of kin to receive, upon request, a reasonable explanation of the charge[s] or bill[s] for the resident's care in the facility, regardless of the source of payment;



(9) in the case of a private resident, to increase the basic *per diem* rate without written notification to the resident and his/her legal representative of the higher rate; such notification shall be given not less than 60 days prior to the effective date of the higher rate so as to insure an orderly transfer of the resident if the resident cannot afford the higher rate.

(10) to demand that any private resident pay, at or prior to his/her admission to the facility, any security deposit that is greater than the total of one month's *per diem* charges or to fail or refuse:

(a) to give the resident, his/her legal representative or next of kin a signed receipt indicating the amount of the security deposit, the date received, and the employee or agent of the facility who received it;

(b) to place said deposit in an interest-bearing escrow account in a bank located within the Commonwealth under such terms that place such deposit beyond the claim of creditors of the facility;

(c) to provide the resident, his/her legal representative or next of kin with the name of the bank and the account number where the security deposit is located;

(d) to preserve the security deposit intact unless the resident fails to pay for services which he/she requested, which were provided by the facility, and which remained unpaid after having been invoiced in accordance with the facility's regular procedure for two successive months; however, a licensee or administrator may apply the security deposit to outstanding charges for a resident who has spent down his/her assets and is otherwise eligible for Medicaid without invoicing for two successive months;

(e) to return said deposit, plus accrued interest, to the resident, or his/her legal representative or estate within 30 days of said resident's discharge, transfer or death, unless deductions, duly accounted for, have been made in accordance with 940 CMR 4.05(10)(e);

(f) to return said deposit, plus accrued interest, to the resident, or his/her legal representative or estate, within 30 days of receipt of notice of the resident's eligibility for Medicaid, provided that the resident is eligible for Medicaid coverage of long-term care services.

## 4.06: Privacy and Other Personal Rights

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator:

(1) to fail or refuse to assure a resident privacy during medical examination or treatment or during care for his/her personal needs such as bathing, dressing and toileting;

(2) to fail or refuse to permit married residents living in the same facility to share a room, if both spouses so consent;

(3) to fail or refuse to permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by the following:

(a) the resident's individual physician;

(b) any representative of the Secretary of the U. S. Department of Health and Human Services;

(c) any duly appointed designee of the State long-term Care Ombudsman;

(d) any representative of a state agency responsible for maintaining the health, safety and welfare of such residents, including but not limited to

1. the agency responsible for facility licensure or reimbursement;

2. the agency responsible for the protection and advocacy system for developmentally disabled individuals;

3. the agency responsible for the protection and advocacy system for mentally ill individuals;

(4) to fail or refuse to permit immediate access to any resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(5) to fail or refuse to permit immediate access to any resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(6) to fail or refuse to permit reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time;

(7) to fail or refuse to permit representatives of the State Long-Term Care Ombudsman or a representative of a community advocacy group certified by the Executive Office of Elder Affairs, to examine a resident's clinical records with the permission of the resident or the resident's legal representative;

(8) to fail to allow a resident to communicate privately with a duly designated representative of the State Long-Term Care Ombudsman;

(9) to fail or refuse to permit a resident private and unrestricted communications with his/her spouse, physician, representative of the clergy, attorney or legal representative;

(10) to fail or refuse to assure a married resident privacy during visits by his/her spouse;

(11) to fail or refuse to provide at least 48 hours advance written notice, excluding weekends and holidays, to a resident before the resident's roommate is changed, except in an emergency situation;

(12) to fail or refuse to assure the resident the right to meet with or participate in activities of social, religious and community groups at his/her discretion, provided that such activities do not interfere with the rights of other residents in the facility;

(13) to fail or refuse to provide a resident with privacy in written communications, which includes:

(a) the right to send and promptly receive mail that is unopened;

(b) the right to have access to stationery, postage and writing implements at the resident's own expense;

(14) to fail or refuse to assure reasonable access to a telephone where calls can be made and received without being overheard;

(15) to fail or refuse to permit a resident to present grievances free from restraint, interference or coercion, discrimination or reprisal, on both his/her own behalf or on behalf of others, to the facility's staff, to government officials including, but not limited to, a representative of the Department of Public Health or a duly appointed designee of the State Long-Term Care Ombudsman, if applicable, or to any other person;

(16) to fail to take prompt action to resolve any grievance presented by a resident or his/her legal representative, or to fail to respond promptly, to the extent possible, to all requests or inquiries made by a resident, his/her legal representative, or a duly appointed designee of the State long-term Care Ombudsman;

(17) to fail to provide and post, in each identifiable unit, or, in the case of institutions providing chronic disease or rehabilitative services to individuals for 60 days or more, in each unit in which such individuals reside, the names, addresses and telephone numbers of all pertinent State agencies such as the Department of Public Health, Division of Medical Assistance, the State Long-Term Care Ombudsman, the Office of the Attorney General (including both the Medicaid Fraud Control Unit and the Consumer Protection Division), and the local legal services office to which residents may direct complaints or charges of abuse, neglect and misappropriation of personal property or violation of 940 CMR 4.00 *et seq.*;

(18) to require a resident to perform services for the facility that are not included for therapeutic purposes in the resident's plan of care; except that a resident may perform voluntary service or services in the facility for reasonable consideration when:

(a) the facility has documented the need or desire for work in the plan of care;

(b) the plan specifies the nature of the services performed and whether the services are voluntary or paid;

(c) if paid, compensation is at or above prevailing rates; and

(d) the resident agrees to the work arrangement described in the plan of care;

(19) to fail or refuse to permit a resident to interact and join with other residents or individuals within or outside of the facility;

(20) to fail or refuse to provide a resident reasonable access to individuals or representatives of community groups that provide health, social or other services, subject to the resident's right to deny or withdraw consent at any time.

(21) to fail or refuse to provide access to the facility at reasonable hours to individuals or representatives of community groups or other groups who seek to provide legal services to residents without charge to the residents.

## 4.07: Residents' Personal Funds and Belongings

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator:

- (1) to require any resident to deposit his/her personal funds with the facility;
- (2) to fail or refuse to permit a resident to manage his/her personal financial affairs;
- (3) to fail or refuse, upon a resident's written authorization, to hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in 940 CMR 4.07(4) through (7) or, for residents of chronic disease and rehabilitation hospitals, as defined by 940 CMR 4.01(12);
- (4) to manage a resident's personal funds without either his/her written authorization to do so or the written authorization of his/her legal representative; the written authorization shall contain the information required by 940 CMR 4.01(17) and shall include specification of the funds over which the licensee or administrator shall have control;
- (5) in the event that any resident or his/her legal representative provides the facility with written authorization to manage personal funds, to fail to:
  - (a) deposit a resident's personal funds in excess of \$50, in an interest bearing escrow account, separate from any of the facility's operating accounts, that credits all interest earned on resident's funds to that account, and is in a bank located within the Commonwealth, under such terms as will place such deposit beyond the claims of creditors of the licensee, including a receiver or trustee in bankruptcy;
  - (b) maintain a resident's funds that do not exceed \$50 in a non interest-bearing escrow account, an interest bearing escrow account, or in a petty cash fund;
  - (c) to provide the resident, his/her legal representative or next of kin with the name of the bank and the account number where any funds of the resident are deposited;
  - (d) provide the resident with his/her personal funds to spend upon his/her request.
- (6) if the licensee or administrator manages a resident's personal funds, to fail or refuse to establish and maintain a system that assures a full and complete and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility on the resident's behalf; to fail or refuse to provide an individual financial record which shall include a written record of all financial transactions and documentation of all interest earned thereon; such record must be available through quarterly statements and on request to the resident, his/her legal representative or next of kin;

(7) to fail or refuse to permit a resident to rescind at any time his/her written authorization that the licensee or administrator manage his/her personal funds;

(8) except in the case of a private resident, if a resident's personal funds are managed by the facility, to fail to notify the resident and his/her next of kin or legal representative when such funds are within \$200 of the amount that could result in a loss of eligibility for Medicaid or SSI under 42 CFR § 483.10(c)(5)(i) through (ii) and any applicable state regulation;

(9) to fail or refuse to permit a resident to retain and use personal possessions, including some furnishings and appropriate clothing as space permits, unless to do so would infringe upon rights or health and safety of other residents;

(10) to fail to provide adequate and secure storage space to each resident for his/her personal property as well as individual access to a private storage area, which shall include, but need not be limited to, a private, individually locked drawer or box to which the resident shall have sole control of the key, except that the administrator or a designee shall hold a master key to such locked spaces;

(11) to fail or refuse to convey, upon the death or transfer of a resident, the resident's personal funds which had been deposited with the facility and a final accounting of those funds either to the resident, legal representative, or the individual administering the resident's estate, within 30 business days of said resident's transfer or death.

(12) to permit any commingling of resident funds with facility funds or with the funds of any person other than another resident.

## 4.08: Medical Treatment and Information

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator:

(1) to fail or refuse to permit a resident to choose his/her personal attending physician;

(2) to fail or refuse to permit a resident to be fully informed in advance about care and treatment and of any changes in care or treatment that may affect the resident's well being;

(3) to fail or refuse to permit a resident to participate in the planning of his/her care and treatment or in decisions relating to changes in such care or treatment; where a resident has been adjudged incompetent under Massachusetts state law, his/her legal representative shall act on his/her behalf;

(4) to fail or refuse to inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care;

(5) to fail or refuse to permit a resident or his/her legal representative, upon an oral or written request, to access within 24 hours all records pertaining to himself/herself including current clinical records except if otherwise prohibited by law;

(6) to fail or refuse to permit a resident, after receipt of his/her records for inspection, to purchase at a cost not to exceed the community standard, photocopies of the records or any portions thereof upon request and two working days advance notice; for residents who are entitled to receive such photocopies free of charge pursuant to state or federal law, to fail or refuse to provide such photocopies free of charge;

(7) to fail or refuse to inform the resident or his/her legal representative, in a language the resident understands, of the resident's total health status, including, but not limited to, his/her medical condition;

(8) to fail or refuse to permit a resident to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive; to fail or refuse to comply with an advance directive, except if otherwise prohibited by law;

(9) if a resident refuses treatment or drugs, to fail or refuse to make prompt and good faith efforts to obtain information from qualified sources about the likely consequences of a resident's refusal to receive the treatment or drugs or to fail or refuse to provide the resident with that information as soon as possible;

(10) to fail or refuse to respond promptly, to the licensee's or administrator's best knowledge, to any inquiry by the resident relating to anything in his/her medical or personal record;

(11) to fail or refuse to permit any person who has a resident's written authorization to examine, at reasonable times, all the medical and personal records relating to such resident, or to fail or refuse to respond promptly, to the extent of the licensee's or administrator's best knowledge, to any inquiry made by the person who has the resident's written authorization relating to anything in the resident's medical or personal records;

(12) to release a resident's personal or medical record to any individual outside the facility without the prior written authorization of the resident or his/her legal representative except in case of his/her transfer to another health care institution or as required by law or third party contract;

(13) to fail or refuse to immediately inform the resident, consult with the resident's physician, and, if known, notify the resident's legal representative or next of kin when 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);

(c) a need to alter treatment significantly (e.g., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment);

(14) to fail or refuse to permit a resident to purchase necessary drugs or personal items at the pharmacy of his/her choice, provided that the prescription complies with all relevant regulations governing pharmacy labeling;

(15) 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;

(16) to fail or refuse to effectuate the right of any resident to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion;

(17) to fail or refuse to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and other officials in accordance with state law through established procedures;

(18) to administer or permit the administration of any psychotropic drug to any resident who has not been adjudged incompetent to make treatment decisions concerning him/herself without:

(a) obtaining the resident's informed consent and written authorization to do so, and

(b) following a written plan of treatment which has been prepared by the resident's physician and is designed to eliminate or modify the symptoms for which the drugs are prescribed;

(19) to administer or permit the administration of any psychotropic drug to any resident who has been adjudged incompetent of 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.

## 4.09: Discharge and Transfers

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or administrator

(1) to fail, in discharging or transferring a resident of a nursing facility, to comply with the Division of Medical Assistance regulations at 130 CMR 610.000 et seq., or any substitute or further amended regulations promulgated by any successor state agency. Under 940 CMR 4.00, the obligation of a licensee or administrator includes but is not limited to providing a resident with advance written notice of the discharge or transfer, which notice shall include a statement informing the resident of his or her right to request a hearing before the Division of Medical Assistance. A licensee or administrator may discharge or transfer a resident only for one or more of the reasons set forth in 130 CMR 610.220(A).

(2) to discharge or transfer a resident, when a state or federal agency refuses, or ceases to authorize payment for a Medicare or Medicaid resident until all administrative appeals have been exhausted;

(3) to discharge or transfer a resident without documentation of the reason for such discharge or transfer in the clinical record by the resident's attending physician, unless the health or

safety of individuals in the nursing facility would be endangered, in which case the reason for such discharge or transfer may be documented by a physician.

(4) to move a resident to different living quarters within the facility, contrary to the resident's wishes, except to meet the resident's health care or safety needs which otherwise could not be met, as documented in the resident's clinical record by his/her attending physician;

(5) to fail or refuse to readmit to the facility's next available bed in a semi-private room, a resident receiving or eligible to receive public assistance who had been transferred for hospitalization or therapeutic leave and whose absence exceeded the authorized bed-hold leave if that resident requires the facility's services; to fail or refuse to readmit to the facility's next available bed in a semi-private room, a resident who had been transferred for hospitalization or therapeutic leave if that resident requires the facility's services;

(6) to fail to discuss the planned discharge or transfer from the facility with the resident and his/her legal representative or next of kin.

(7) to fail to consult the resident and his/her family or legal representative in choosing another facility, and to take all reasonable steps to implement the resident's choice of such facility;

(8) in an institution licensed by the Department of Public Health to provide chronic disease or rehabilitative services to a resident as defined by 940 CMR 4.01(12)

(a) to fail or refuse to provide, except in the case of an emergency discharge or transfer, seven days advance written notice to the resident of a discharge or transfer; such written notice shall include:

1. the date of the discharge or transfer;
2. the location to which the resident is to be discharged or transferred;
3. the reason for the discharge or transfer;
4. a statement informing the resident of his/her right to request a hearing before the Division of Medical Assistance;
5. the name, address and phone number of the local legal services office;

(b) to fail or refuse to document for each resident who is to be discharged, a written discharge plan that specifies the services or care to be required by the resident, the frequency, intensity, and duration of such services, and the resources available to provide the care or services, including available family and community support; such a plan must be updated if the resident's condition changes significantly;

(9) in a facility licensed by the Department of Public Health as a residential care facility, convalescent or rest home, infirmary maintained in a town, or charitable home for the aged - to fail or refuse to provide, except in the case of an emergency discharge or transfer, 30 days advance written notice to the resident of an anticipated discharge or transfer, such written notice shall include:



- (a) sufficient explanation for the discharge or transfer, including the facility's plans and procedures for discharge or transfer;
- (b) a statement that the resident has the right to express objection to his/her discharge or transfer to a representative of the facility;
- (c) the specific address of the location to which the resident is to be discharged or transferred;
- (d) a statement that all reasonable efforts have been taken by representatives of the facility to provide counseling to the resident to prepare him/her to adjust to any discharge or transfer;
- (e) the name, address and phone number of the local legal services office;
- (f) a statement that all reasonable precautions have been taken to eliminate or reduce any harmful effects that may result from the discharge or transfer.

## 4.10: Severability

If any provision of 940 CMR 4.00 or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of 940 CMR 4.00 and the applicability of such provision to any other person or circumstance shall not be affected thereby.

## 4.11: Effective Date

940 CMR 4.00 shall become effective on October 21, 1994.

## REGULATORY AUTHORITY

940 CMR 4.00: M.G.L. c. 93A, § 2(c).

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