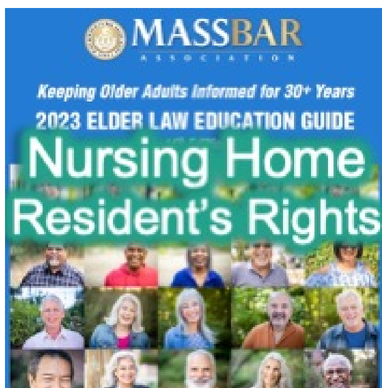

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CHAPTER 7

LONG-TERM CARE

Residents' Legal Rights

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 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.

A. What Is Nursing Home 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.

COVID-19

Public Health Emergency. The earlier COVID-19-related state of emergency was rescinded effective June 15, 2021. However, the governor issued an executive order on May 28, 2021, finding that a public health emergency still existed, allowing DPH to continue to mandate certain measures to respond to the virus outbreak.

Waivers and Guidance to Nursing Homes and Assisted Living Residences. CMS and DPH have responded to the COVID-19 pandemic by issuing waivers of certain regulations as well as ongoing memoranda of guidance regarding many of the nursing home and assisted living residence provisions described in this chapter. The guidance from these organizations is updated frequently, as outbreak conditions change. Detailed information can be found on the CMS website, www.cms.gov, as well as the DPH website: www.mass.gov/info-details/covid-19-public-health-guidance-and-directives#health-care-organizations-.

Other Provisions. Nursing facilities should not be allowed to make decisions about admission or return to the facility based on COVID-19 status, although facilities may be required to undertake certain measures. If a facility refuses to readmit a resident after a hospitalization, a Medicaid appeal may be filed whether or not the resident is Medicaid-eligible. Visitation should be allowed under the procedures outlined in both the CMS and DPH publications, subject to change depending upon the state of the pandemic.

Closures. Due to a variety of factors, including the public health emergency, staffing shortages and aging buildings, an increasing number of nursing homes and assisted living facilities have recently closed. It appears that this trend is likely to continue. DPH regulates and, in coordination with the Long-Term Care Ombuds Program, monitors nursing home closures. The Executive Office of Elder Affairs has recently amended its regulations to require a 120-day advance notice prior to the closure or sale of an assisted living facility.

DPH Website. The DPH website maintains an updated list of nursing facilities that have an admissions freeze based on infection control surveys or the number of new cases. The website also contains a list of pending nursing home closures.

Moving a Loved One Home During COVID-19 Pandemic. See the Appendix on page 63 for DPH guidance on moving residents from nursing homes, rest homes and assisted living facilities.

B. What Is Assisted Living?

Assisted living is a residential arrangement providing room and board for eligible older adults 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.[1] However, except as has been allowed under COVID exceptions, assisted living residents should not require the level of care provided in a nursing home.[2] Typically, assisted living residences 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.[3]

C. What Is a Continuing Care Retirement Community?

A continuing care retirement community (CCRC) is an option that offers single and married older adults a continuum of housing, services and 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.[4] 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.[5]

NURSING HOME CARE

A. Choosing a Nursing Home

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.)* 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.

Additionally, 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.[6] Although the attorney general's regulations and Massachusetts law prohibit discrimination based on eligibility for MassHealth benefits, these provisions are often difficult to enforce. See 940 C.M.R. 4.03 and MASS G.L. 151B, § 4.

When choosing a nursing home, it is important to speak with others, such as the long-term care ombudsman, care managers, residents, and family members of residents. The Massachusetts Advocates for Nursing Home Reform and the National Consumer Voice websites contain information on how to select a nursing home and what questions to ask.

The following are quotes from the Massachusetts Advocates for Nursing Home Reform website:

- 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.**
- 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.
- 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.
- And 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.

B. Dementia Care Standard for Nursing Homes

Massachusetts law provides further safeguards for dementia patients in nursing homes in the form

of regulations that require all direct care workers to have eight hours of initial training and an additional four hours of training annually.

In addition, Dementia Special Care Units (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.). 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.[7]

Additionally, 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.[8] 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.

C. Nursing Home Resident Rights

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.[9] Nursing home residents have the right:

- To obtain, upon admittance to the facility, written notice of their rights as residents;[10]
- To freedom of choice of a physician, facility and health care mode;[11]
- To obtain, upon request, an itemized bill for nursing home services;[12]
- To have all medical records and communications kept confidential to the extent provided by law;[13]
- To have all reasonable requests responded to promptly within the capacity of the facility;[14]
- To access all of their medical records upon request;[15]
- To refuse to be examined, observed or treated without jeopardizing access to other medical care;[16]
- To have privacy during medical exams or treatment;[17] and
- To have informed consent to the extent provided by law.[18]

A nursing home resident is also entitled to certain rights relating directly to their personal freedoms. A nursing home resident is entitled:

- To communicate with persons of one's choice, privately and without restriction;[19]
- To make a complaint or express a grievance free from reprisal, restraint, coercion or discrimination;[20]
- 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;[21]
- To participate in social, religious and community groups;[22]
- To manage one's own financial affairs;[23]
- To keep and use personal possessions and clothing as space permits, and to have personal possessions reasonably safeguarded and secured;[24]
- To be permitted to share a room with one's spouse;[25] and
- To receive at least 48 hours' notice of a roommate change, barring any emergency.[26]

See "Arbitration" on the next page for information on mechanisms to enforce residents' rights. Effective September 2019, federal regulation provides that residents cannot be required to agree to arbitration as a condition of admission to, or continued stay in, a nursing home.

ARBITRATION

Long-term care providers — nursing homes, assisted living residences and CCRCs — frequently include arbitration requirements in their admission agreements. By agreeing to arbitration, consumers are giving up important rights, including the constitutional right to a jury trial, 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 to a jury trial; alternative dispute resolution is always an option once a dispute has arisen if the parties agree. The practice of forced arbitration has had the effect of denying residents and their family members access to justice. 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 an important and helpful brochure regarding this issue in the Appendix at the end of this chapter.*

D. Nursing Home Transfers and Discharges in Medicaid- and Medicare-Certified Facilities

Nursing home residents should not be transferred or discharged from their rooms (their homes) without cause. 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.[27] Most nursing homes in Massachusetts are certified to participate in the Medicaid and Medicare programs. 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.

Before a nursing home can transfer or discharge a resident, there must be a permissible reason for the discharge properly documented in the resident's record. A resident can be moved only:

- If necessary for the resident's welfare and the resident's needs cannot be met in the facility.
- If the resident's health has improved sufficiently so that the resident no longer needs nursing home care.
- Due to the clinical or behavioral status of the resident.
- If the health of individuals in the facility would otherwise be endangered.
- For nonpayment or if the resident does not submit the necessary paperwork for third-party payment.
- If the nursing home closes.[28]

However, a resident cannot be transferred or discharged for nonpayment pending an administrative appeal of a denial of eligibility.[29]

Discharge Planning: 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.[30] 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.

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.[31]

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.[32]

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.

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.[33]

Intra-facility Transfers: 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.[34] The reason for an intra-facility transfer must be documented in the resident's clinical record by a physician. 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.

The resident must be notified of the proposed intra-facility transfer and the right to appeal to the facility's medical director.[35] 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.[36]

Bed 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.[37] Private pay residents may pay to hold their beds during such leaves. 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.[38] The bed hold period is currently 20 days but subject to change on a yearly basis.

Readmission After Hospitalization: A nursing home resident has the right to be readmitted to the resident's nursing home following a hospitalization. The failure of a nursing home to readmit a resident following a hospitalization is a discharge, which requires notice and appeal rights.[39] The resident has a right to file an appeal, even if a nursing home has failed to give the required notice.

E. Department of Public Health Regulations

DPH monitors and licenses nursing home facilities throughout the commonwealth.[40] 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.[41]

DPH sets out rules and regulations governing medical and nursing care, the maintenance of medical records, the handling of patient funds, the prevention of loss or damage to residents' personal possessions, and standards of facility sanitation.[42] DPH surveyors have the right to visit and inspect any nursing home institution at any time to monitor compliance with regulations.[43] Such inspections are unannounced, and occur at least twice per year.[44] 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. At the expiration of such time period, the violation will be made public if no correction plan has been submitted.[45] DPH also fields complaints by or on behalf of nursing home residents through its website and telephone hotline. DPH requires nursing homes to obtain written informed consent to treat with any psychotropic medications. The consent must be signed by the resident, the resident's health care agent or a duly authorized guardian. The written informed consent must be documented on a form approved by DPH, kept in the resident's medical record, and must in-

clude, 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.

> **INFORMED CONSENT FOR PSYCHOTROPIC MEDICATION**
>
> **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.**
>
> **See DPH Circular Letter: DHCQ 17-2-699, dated 2/1/17:**
>
> - Summarizes the law.
> - Lists psychotropic and antipsychotic medications.
> - Requires an informed consent form:
>   - Prior to administration of medication.
>   - Anytime dosage range has changed beyond what resident or authorized person has consented.
>   - At least yearly.
> - Provides a good summary of when an agent under a health care proxy can consent to administration of antipsychotics without court approval.

F. Medicaid Regulations

To be certified for participation in MassHealth and Medicare programs, a nursing home facility must also follow regulations promulgated by the Office of Medicaid.[46] 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.[47]

G. Attorney General's Regulations

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.[48] 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.[49]

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.[50]

Nursing homes may not limit a resident's choice of physician or, for that matter, a resident's choice of pharmacy. See Chapter 5.[51]

Nursing home facilities cannot require residents to pay a non-refundable deposit.[52]

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.[53]

While this is hardly an exhaustive list of the regulations as set out by the Attorney General's Office, it provides an overview of standards 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 and provides a mechanism for suing a facility and collecting damages and possibly attorney's fees should that be necessary.

H. Consumer Resources for Nursing Home Residents

If you are facing neglect, abuse, an illegal discharge or any other consumer issue in long-term care, it is important to protect your rights and build a record with the public agencies charged with long-term care oversight. *See list of consumer resources at end of chapter.*

I. Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman Program has been moved from the Executive Office of Elder Affairs (EOEA) to the Executive Office of Health and Human Services. 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 facilities, rest homes and assisted living residences. Visiting facilities on a regular basis, ombudsmen offer a way for residents to voice

their complaints and work toward resolution with staff. Each facility is required to post, in a conspicuous location, the name and contact information of the visiting ombudsman assigned to that facility.

ASSISTED LIVING

A. Assisted Living Regulations

The EOEA certifies all assisted living residences (ALRs) in Massachusetts.[54] 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. An ALR must provide only single or double living units with lockable doors and a kitchenette within the unit or access to cooking facilities.[55] Any newly constructed ALR must provide a full bathroom for each unit, while existing ALRs must provide, at minimum, a private half-bathroom.[56] 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.[57] 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.[58] 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.[59] *See cover sheet attached in Appendix.*

> **Skilled Care in Assisted Living.** During the COVID-19 emergency, ALRs were allowed to provide skilled care in certain circumstances. Proposed legislation could extend or permanently change some of the rules regarding certain skilled care services that ALRs can provide.

B. Assisted Living Resident Rights

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

- To live in a decent, safe and habitable environment;[60]
- To be treated with consideration and respect;[61]
- To have one's personal dignity and privacy observed;[62]
- To retain and use personal property in one's unit;[63]
- To communicate privately and without restriction;[64]
- To contract or engage with health care professionals in one's unit as needed;[65]
- To engage in community services and activities as one chooses;[66]
- To manage one's own financial affairs;[67]
- To present grievances and recommendations without reprisal;[68]
- To have all of one's records kept confidential;[69]
- To have privacy during medical treatment or other services;[70]
- To have reasonable requests responded to promptly and adequately; and[71]
- To be free from involuntary discharge or eviction without judicial process (summary pro cess eviction proceedings).

It is important to note that assisted living is a residential model and residents do not have to move unless ordered to do so by a court following notice and a court hearing.

C. Assisted Living Ombudsman Program

The Assisted Living Ombudsman Program has been expanded and combined with the Long-Term Care Ombudsman Program, now housed under the Executive Office of Health and Human Services. 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. The ombudsman will enter the ALR to review and examine the situation.[72] 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.[73] 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) 727-7750 or (800) AGE-INFO (1-800-243-4636).

D. Enforcement

In addition to contacting the Ombudsman Program or an attorney, residents can file a complaint with the EOEA or the Attorney General's Office. 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.

CONTINUING CARE RETIREMENT COMMUNITIES

A. Continuing Care Retirement Community 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. There are no regulations governing CCRCs. However, any part of the CCRC that is licensed by DPH as a skilled nursing facility is subject to the same laws, rules and regulations as any long-term care facility.

CONSUMER RESOURCES FOR ASSISTED LIVING RESIDENTS

Residents in assisted living may not be "discharged" or evicted without written notice and due process of law (i.e., summary process).

File a Complaint with the State Ombudsman Program
The Executive Office of Health and Human Services has a separate Ombudsman Program for assisted living facilities.
Phone: (617) 727-7750 or 1-800-243-4636

Send a Consumer Complaint
A demand letter is likely to get the facility's attention and may yield a resolution. Send copies of the demand letter to:

Mary Freeley, Esq., Consumer Protection Division
Office of the Attorney General, One Ashburton Place, Boston, MA 02108
Phone: (617) 727-8400
Email: ago@state.ma.us
Fax: (855) 237-5130

Assisted Living Ombudsman Program
One Ashburton Place, Boston, MA 02108
Phone: (617) 727-7750

Valuable advocacy resources can also be found at Massachusetts Advocates for Nursing Home Reform: www.manhr.org.

The Executive Office of Elder Affairs 2019 Consumer Guide to Assisted Living can be found online at: www.mass.gov/files/documents/2019/09/11/ALR%20Consumer%20Guide_09.2019.pdf.

CONSUMER RESOURCES

If you are facing neglect, abuse, an illegal discharge 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

Valuable advocacy resources can also be found at the following organizations:

Massachusetts Advocates for Nursing Home Reform (MANHR): www.manhr.org
National Consumer Voice for Quality Long-Term Care: 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/

Contact a local legal services program, elder law attorney or care manager.

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: www.aginglifecare.org/ALCA/Regional_Chapters/New_England_Chapter/New_England_Chapter_HOME.aspx/

File a Complaint with the Department of Public Health (DPH)

DPH website: 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. 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 (as outlined below) 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: 1-800-462-5540 (24-hour complaint line for those unable to file a written complaint)

Contact the State Ombudsman Program: (617) 727-7750
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.
A list of local long-term care ombudsman programs is at: www.mass.gov/doc/nursing-rest-home-ombudsman-local-contact-information/download.

A list of assisted living ombuds programs is at: www.mass.gov/doc/assisted-living-ombudsman-local-contact-information/download.

Send a Consumer Complaint

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

Mary Freeley, Esq., Consumer Protection Division
Office of the Attorney General
One Ashburton Place, Boston, MA 02108
Phone: (617) 727-8400
Email: ago@state.ma.us
Fax: (855) 237-5130

Carolyn Fenn, State Long-Term Care Ombudsman
One Ashburton Place, Fifth Floor, Boston, MA 02108

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

APPENDIX — DPH GUIDELINES

Considerations for Moving a Loved One Home from a Nursing Facility, Rest Home or Assisted Living Residence

During the declared state of emergency in response to the COVID-19 pandemic, families may be considering whether their loved one should move from a nursing facility, rest home or assisted living residence. Outlined below are some steps to evaluate and a list of resources that are available to assist families in assessing this complex decision, as it important to fully understand the care needs and other supports that your loved one may need.

Step 1: What type of facility does my loved one reside in?

The processes and implications are different depending on where your loved one resides. Read below to learn more.

If a loved one lives in an assisted living residence (ALR):	If a loved one lives in a nursing facility or rest home:
There is no uniform process to move out, as the tenancy is governed by landlord-tenant law; however, • If the move is permanent, it is important to check the resident agreement to understand any applicable terms or penalties for terminating residency. • If the move is temporary, it is important to inform the residence (preferably in writing) that the family member will be spending time away from the ALR and continue to make required payments to preserve your family member's tenancy so that they can return to their unit at a later date. • It is also important to coordinate the date, time and process for the move or subsequent return with the ALR and ensure access to any necessary medications, supplies and assistive equipment.	If you have decided on a discharge home, you can begin the process by: • Contacting the social worker at the nursing home to begin to facilitate the discharge process outlined below. • The resident may initiate this contact on their own, or if a resident does not have decisional capacity, the authorized contact or guardian can make this request. • It is important to note that if a family chooses to discharge a loved one from a nursing facility or rest home, their loved one is not guaranteed readmittance to that facility.

Step 2: Primary considerations for moving a loved one

Here are some key questions to consider in moving a loved one from their facility to home:

- Does my loved one have a safe and accessible place to live?
- Is there consistent support and a backup plan should that support not be available?
- What specific services and supports are needed?

Step 3: What are your loved one's needs? Who will provide assistance?

This chart below can assist with evaluating your loved one's needs, help you gauge the level of assistance they may require, and allow you to determine who within the family/social support network can provide the in-home assistance. This chart can be shared with the social worker to help determine how much assistance is required and if an outside service is needed.

Needs	Independent/ able to do for themselves	Family/friend/in-home support will provide needed assistance	Will need outside assistance
Bathing/personal hygiene			
Getting dressed/undressed			
Toileting			
Walking (ambulating)			
Getting into and out of chair or bed (transferring)			
Taking or reminding to take medication			
Meal preparation			
Shopping			
Laundry			
Transportation to medical appointments			
Supervision (due to cognition/memory loss)			
Other			

Step 4: If outside services are needed:

Now that you have a sense of what your loved one's needs are and which of these needs requires outside assistance, there are resources in your community to assist you with these decisions.

Aging Services Access Points (ASAPs) are available in every region in the state and can help evaluate the following questions regarding the long-term care needs of a loved one:

- What services or care are available to support community living?
- What assistive devices or home modifications are available to support my loved one living in the community?
- Does insurance cover any services, care and/or home modifications? If not, what funding, loans or donations may be available?

Additionally, if your loved one was previously receiving in-home services from their local ASAP, the ASAP can assist with reinstating services upon their return home.

Step 5: Call your local Aging Services Access Point (ASAP):

Utilize your local ASAP to help navigate these decisions and ask which option is best for your loved one. Go to www.MassOptions.org to identify your local ASAP and their contact information.

EXECUTIVE OFFICE OF ELDER AFFAIRS

Assisted Living Certification Unit
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.
__ Resident's 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.

EOEA issued: Effective 1-1-19

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.

MassNAELA
National Academy of Elder Law Attorneys
Massachusetts Chapter
Leading the Way in Special Needs and Elder Law in Massachusetts

The Massachusetts Chapter of the National Academy of Elder Law Attorneys (MassNAELA) is a non-profit organization that was incorporated in 1992, to serve the legal profession and the public with the following mission:

- To provide information, education, networking, and assistance to Massachusetts attorneys, bar organizations, and other individuals or groups advising elderly clients, clients with special needs and their families;
- To promote high standards of technical expertise and ethical awareness among attorneys, bar organizations and other individuals or groups engaged in the practice of advising elderly clients, clients with special needs and their families;
- To develop public awareness and advocate for the benefit of the elderly, those with special needs and their families, by promoting public policies that support our mission; and
- To encourage involvement and enhance membership in, and to promote networking among members of the National Academy of Elder Law Attorneys.

MassNAELA is a voluntary association whose members consist of a dedicated group of elder law and special needs attorneys across the Commonwealth of Massachusetts.

Contact Information for MassNAELA

P.O. Box 600046

Newtonville, MA 02460

Phone: (617) 566-5640

Fax: (781) 207-9027

www.MassNAELA.com

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Elder Advocates Spread the Word:

Just Say "NO" to Arbitration!

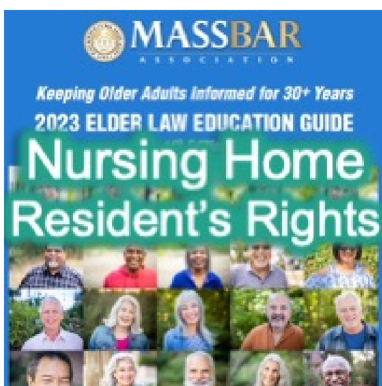
Frail nursing home residents and their frazzled family members are routinely asked to sign a stack of densely-printed documents at the time of admission, without adequate time to review them or to consult with counsel, and without realizing that the agreements may include forced arbitration provisions. Arbitration requires residents to waive their fundamental constitutional right to a jury trial, even if they later suffer serious injury, medical malpractice, or wrongful death. Because arbitration is secret and there is no public record of the outcome, it keeps cases of malpractice, abuse and neglect out of the public eye, effectively denying residents and their families access to justice.

A new federal rule from Centers for Medicare and Medicaid Services, effective September 16, 2019, provides that:

- *Residents **may not be required to agree to arbitration as a condition of admission** to a nursing home.*
- *Residents **may not be required to agree to arbitration as a condition of continued stay** in a nursing home.*
- *Residents and their representatives have a **30-day right to rescind** the arbitration agreement.*
- *Nursing homes **must explicitly inform residents or their representatives of the right not to sign** an arbitration agreement as a condition of admission to, or right to remain in, the facility.*
- *The arbitration **agreement itself must explicitly state that the agreement is not a condition** of admission to, or right to remain in, the facility.*
- *Facilities must ensure that the agreement is explained to residents and their representatives in a **"form and manner"** that they understand, including in a language they understand.*

Although the new rule does not impose an outright ban on arbitration agreements in nursing homes, it does affirm the right of residents to "just say no" to arbitration clauses in admission agreements. Elder advocates should seize this opportunity to educate residents, their families and representatives, and the public about these critical rights.

1. MASS. G.L. ch. 19D, § 1 (2012).
2. *Id.*
3. *Id.*
4. MASS. G.L. ch. 93, § 76 (2012).
5. *Id.*
6. www.medicaid.gov/medicaid/ltss/institutional/nursing/index.html.
7. 105 CMR 150.000: STANDARDS FOR LONG-TERM CARE FACILITIES 150.022 – 150.029 Dementia Special Care Units.
8. *Id.*
9. MASS. G.L. ch. 111, § 70E (2010).
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. MASS. G.L. ch. 111, § 70E (2010).
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. 940 C.M.R. § 4.06.
20. *Id.*
21. *Id.*
22. *Id.*
23. 940 C.M.R. § 4.07.
24. *Id.*
25. 940 C.M.R. § 4.06.
26. *Id.*
27. Nursing Home Reform Law, 42 U.S.C. §§ 1395i-3(a)-(h) and 1396r(a)-(h).
28. 42 C.F.R. § 483.15(c)(1).
29. 940 C.M.R. § 4.09(2).
30. 42 C.F.R. § 483.15(c)(1).
31. 42 C.F.R. § 483.15(c)(3).
32. 42 C.F.R. § 483.15(c)(3).
33. 42 C.F.R. § 483.15(e)(1)(i).
34. *Id.*
35. *Id.*
36. 42 C.F.R. § 483.10(e)(6), 940 C.M.R. § 4.06(11).
37. 42 C.F.R. § 483.15(c)(1) and (2).
38. 42 C.F.R. § 483.15(e)(1)(i).
39. 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.).
40. MASS. G.L. ch. 111, § 71 (2010).
41. *Id.*
42. *Id.* § 72.
43. MASS. G.L. ch. 111, § 72 (2010).
44. *Id.*
45. *Id.*
46. 130 C.M.R. § 456.406.
47. *Id.*
48. *Id.*
49. 940 C.M.R. § 4.03.
50. 940 C.M.R. § 4.04.
51. *Id.*
52. *Id.*
53. 940 C.M.R. § 4.06.
54. 651 C.M.R. § 12.03.
55. 651 C.M.R. § 12.04.
56. *Id.*
57. *Id.*
58. 651 C.M.R. § 12.08.
59. 651 C.M.R. §12.08(4).
60. 651 C.M.R. § 12.08.
61. *Id.*
62. *Id.*
63. *Id.*
64. 651 C.M.R. § 12.08.
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. 651 C.M.R. § 12.08.
70. *Id.*
71. *Id.*
72. 651 C.M.R. § 13.00.
73. *Id.* § 13.03.



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