

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

Chapter 14 Assisted Living Programs

Authority: Health-General Article, Title 19, Subtitle 18, Annotated Code of Maryland

.01 Purpose

The purpose of this chapter is to set minimum, reasonable standards for licensure of assisted living programs in Maryland. This chapter is intended to maximize independence and promote the principles of individuality, personal dignity, freedom of choice, and fairness for all individuals residing in assisted living programs while establishing reasonable standards to promote individuals' health and safety.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Abuse of a Resident.

(a) "Abuse of a resident" means physical, sexual, mental, or verbal abuse, or the improper use of physical or chemical restraints or involuntary seclusion as those terms are defined in this regulation.

(b) "Abuse of a resident" does not include:

(i) The performance of an accepted medical procedure ordered by a physician or administered by another health care practitioner practicing within the scope of the physician or health care practitioner's license; or

(ii) Compliance with a valid advance directive.

(2) Activities of Daily Living.

(a) "Activities of daily living" means normal daily activities.

(b) "Activities of daily living" includes:

(i) Eating or being fed;

(ii) Grooming, bathing, oral hygiene including brushing teeth, shaving, and combing hair;

(iii) Mobility, transfer, ambulation, and access to the outdoors, when appropriate;

(iv) Toileting; and

(v) Dressing in clean, weather-appropriate clothing.

(3) Administration of Medication.

(a) "Administration of medication" means the act of preparing and giving a medication to a resident.

(b) "Administration of medication" includes:

(i) Identifying the time to administer the medication;

(ii) Opening the medication container;

(iii) Removing the medication from the container; or

(iv) Giving the medication to the resident.

(c) "Administration of medication" does not include residents who have the cognitive ability to recognize their medications but only require assistance such as:

(i) A reminder to take the medication;

(ii) Physical assistance with opening a medication container; or

(iii) Assistance with removing medication from the container.

(4) "Adult medical day care" has the meaning stated in Health-General Article, §§14-201 and 14-301, Annotated Code of Maryland.

(5) "Advance directive" means:

(a) A witnessed written document, voluntarily executed by the declarant consistent with the requirements of Health-General Article, Title 5, Subtitle 6, Annotated Code of Maryland; or

(b) A witnessed oral statement, made by the declarant consistent with the provisions of the Health-General Article, Title 5, Subtitle 6, Annotated Code of Maryland.

[(6) "Agent" means a person who manages, uses, or controls the funds or assets that legally may be used to pay an applicant's or resident's share of the costs or other charges for assisted living services.]

[(7)](6) *"Alzheimer's/dementia special care" means the care required by any individual with dementia, including a probable or confirmed diagnosis of Alzheimer's disease or a related disorder, regardless of their placement in the facility.*

[(8)](7) "Alzheimer's special care unit" means a secured or segregated special unit or program specifically designed for individuals with dementia, including a probable or confirmed diagnosis of Alzheimer's disease or a related disorder.

[(8) "Assessment" means a process of evaluating an individual's health, functional and psychosocial history, and condition using the Resident Assessment Tool.]

[(9)] (8) "Assist rail" means a hand rail or other similar, substantially constructed device that is installed to enable residents to move safely from one point or position to another.

[(10) "Assisted living manager" means the individual who is:

(a) Designated by the licensee to oversee the day-to-day operation of the assisted living program;
and

(b) Responsible for the duties set forth in Regulation .15 of this chapter.]

[(11)] (9) Assisted Living Program.

(a) "Assisted living program" means a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to meet the needs of individuals who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the individuals.

(b) "Assisted living program" does not include:

(i) A nursing home, as defined under Health-General Article, §19-301, Annotated Code of Maryland;

(ii) A State facility, as defined under Health-General Article, §10-101, Annotated Code of Maryland;

(iii) A program licensed or approved by the Department under Health-General Article, Title 7 or Title 10, Annotated Code of Maryland;

(iv) A hospice care program licensed by the Department under Health-General Article, Title 19, Annotated Code of Maryland;

(v) Services provided by family members;

(vi) Services provided by a licensed residential service agency or licensed home health agency in an individual's own home; or

(vii) A Certified Adult Residential Environment Program that is certified by the Department of Human Resources under Article 88A, §140, Annotated Code of Maryland.

[(12)] (10) "Authorized prescriber" means an individual who is authorized to prescribe medications under Health Occupations Article, Annotated Code of Maryland.

[(13)] (11)"Background check" means a check of court and other records by a private agency.

[(14)] (12)"Bank" means a bank, trust company, savings bank, savings and loan association, or financial institution that is:

(a) Authorized to do business in this State; and

(b) Insured by the Federal Deposit Insurance Corporation.

(13) *"Case management" means the delegating nurse/case manager's collaborative process of assessment, planning, implementation, evaluation, coordination, and monitoring of services to meet the physical, functional, and psychosocial needs of an individual.*

[(15)] (14)"Certified medication technician" means an individual who is certified as a medication technician by the Maryland Board of Nursing under COMAR 10.39.04.02.

[(16)] (15) "Chemical restraint" means the administration of drugs with the intent of significantly curtailing the normal mobility or normal physical activity of a resident in order to protect the resident from injuring the resident or others.

[(17)] (16) Cognitive Impairment.

(a) "Cognitive impairment" means the loss of those thought processes that orchestrate relatively simple ideas, movements, or actions into goal-directed behavior.

(b) "Cognitive impairment" includes lack of judgment, planning, organization, self-control, and the persistence needed to manage normal demands of the individual's environment.

[(18)] (17) "Common-use telephone" means a telephone:

(a) That is within the facility;

(b) That is accessible to residents;

(c) That is located so that residents can have private conversations; and

(d) With which residents can make local calls free of charge.

[(19)] (18) "Contact isolation" means the creation of barriers and other protection such as gloves, masks, or gowns to prevent the spread of an infection by close or direct contact between an infected individual and others.

(19) "*Controlled Dangerous Substances (CDS)*" means a drug or substance listed in Schedule I through Schedule V as defined in Criminal Law Article, §5-101, Annotated Code of Maryland.

(20) "Criminal history records check" means a check of criminal history information, as defined in Criminal Procedure Article, §10-201, Annotated Code of Maryland, by the Department of Public Safety and Correctional Services.

(21) "Delegating nurse/*case manager*" means a registered nurse who:

(a) Is licensed to practice registered nursing in this State as defined in Health Occupations Article, Title 10, Annotated Code of Maryland; and

(b) Has successfully completed the Board of Nursing's approved training program for registered nurses, delegating nurses, and case managers in assisted living[.];

c) Provides nursing oversight and case management to assure resident clinical needs are met;

(d) Provides delegation, supervision, and on-site instruction and guidance to certified nursing assistants, certified medication technicians, and unlicensed direct care staff; and

(e) Appropriately assigns nursing tasks to other licensed nursing staff.

(22) "Delegation of nursing tasks" means the formal process approved by the Maryland Board of Nursing which permits professional nurses to assign nursing tasks to other individuals if the registered nurse:

(a) Provides proper training, supervision, and monitoring; and

(b) Retains responsibility for the nursing tasks.

(23) "Department" means the Department of Health and Mental Hygiene.

(24) "Discharge" means releasing a resident from an assisted living program, after which the releasing program no longer is responsible for the resident's care.

(25) "Emergency admission" means the temporary admittance of an individual in an assisted living program when the individual's health and safety would be jeopardized by not permitting immediate admittance.

(26) "Facility" means the physical plant in which an assisted living program is operated.

(27) Facilitating Access.

(a) "Facilitating access" means:

(i) Making appropriate referrals for care and treatment;

(ii) Arranging for the appointment and involvement of appropriate health care decision makers, when necessary; and

(iii) Facilitating contact between the resident, the resident's representative, health care or social service professional, and needed services.

(b) "Facilitating access" does not mean guaranteeing payment for services that:

(i) Are not covered by the resident agreement; or

(ii) Cannot be paid for by the resident or the resident's [agent.] *representative*.

(28) "Family council" means a group of individuals who work together to protect the rights of and improve the quality of life of residents of an assisted living program.

(29) "Financial exploitation" means the misappropriation of a resident's assets or income, including spending the resident's assets or income:

(a) Against the will of or without the consent of the resident or the resident's [agent] *representative*; or

(b) For the use and benefit of a person other than the resident, if the resident or [agent] *resident's representative* has not consented to the expenditure.

(30) "Frequent" means occurring or appearing quite often or at close intervals, but not continuously.

(31) "Health care practitioner" means an individual who provides health care services and is licensed under Health Occupations Article, Annotated Code of Maryland.

(32) "Health condition" means the status of a resident's physical, mental, and psychosocial well-being.

(33) "Home health services" means those services provided under the provisions of Health-General Article[, §19-404, Annotated Code of Maryland, and COMAR 10.07.10.] §§19-401 and 19-4A-01.

(34) "Household member" means an individual living in an assisted living facility who is not a resident or staff member.

(35) "Incident" means:

(a) The death of a resident from other than natural causes;

(b) The disappearance or elopement of a resident;

(c) An assault on a resident resulting in injury;

(d) An injury to a resident which may require treatment by a health care practitioner, or an event such as a fall which could subsequently require treatment;

(e) Abuse of a resident;

(f) An error or omission in medication or treatment which may result in harm to the resident; or

(g) An emergency situation or natural disaster.

(36) "Informal dispute resolution (IDR)" means an informal process that provides a licensee the opportunity to question the Department about deficiencies cited on a recent inspection.

(37) "Instrumental activities of daily living" means home management skills, such as shopping for food and personal items, preparing meals, or handling money.

(38) "Intensive" means highly concentrated.

(39) *"Interim medication" means medication stored at the assisted living facility with the intention of expediting immediate initiation of emergency or nonemergency dosing until the pharmacy is able to provide a regular supply.*

[(39) "Intermittent nursing care" means nursing care which is provided episodically, irregularly, or for a limited time period.]

(40) Involuntary Seclusion.

(a) "Involuntary seclusion" means the separation of a resident from others or from the resident's room against the resident's will or the will of the resident's representative.

(b) "Involuntary seclusion" does not mean separating a resident from other residents on a temporary and monitored basis.

[(41) "Lavatory" means a basin used to maintain personal cleanliness that has hot and cold running water and sanitary drainage.]

[(42)] (41) "Law enforcement agency" means the Maryland State Police or a police agency of a county or municipal corporation.

[(43)] (42) "License" means a document issued by the Secretary to operate an assisted living program in Maryland.

[(44)] (43) "Licensed pharmacist" means an individual who is authorized to practice pharmacy under Health Occupations Article, Title 12, Annotated Code of Maryland.

[(45)] (44) "Licensee" means the person, association, partnership, or corporation to whom a license is issued.

[(46)] (45) "Management firm" means an organization, under contract with an applicant for a license or a current licensee, that is intended to have or has full responsibility and control over the day-to-day operations of the assisted living program.

(46) "*Manager*" means the individual who is:

(a) *Designated by the licensee to oversee the day-to-day operation of the assisted living program; and*

(b) *Responsible for the duties set forth in Regulation .15 of this chapter.*

(47) "*Medical Orders for Life-Sustaining Treatment (MOLST) form*" means the form required to be developed pursuant to Health-General Article, §5-608.1, Annotated Code of Maryland.

[(47)] (48) "Medical record" has the meaning stated in Health-General Article, §4-301, Annotated Code of Maryland.

[(48)] (49) "Mental abuse" means an intentional course of conduct resulting in emotional harm.

[(49)] (50) "Minimal" means the least amount required to produce the desired result.

(51) "Neglect" means depriving a resident of adequate food, clothing, shelter, supervision, essential medical treatment, or essential rehabilitative therapy.

(52) "*Nursing assessment*" means an assessment completed by a registered nurse that:

(a) *Is comprehensive, systematic, and ongoing;*

(b) *Is the foundation for the analysis of data to determine:*

(i) *Nursing diagnoses;*

(ii) *Expected resident outcomes; and*

(iii) *The resident plan of care;*

(c) *Includes but is not limited to:*

(i) *Extensive initial and ongoing collection of resident data;*

(ii) *Past history, current health status, and potential changes to the resident's condition;*

(iii) *Identification of alterations to the resident's previous condition; and*

(iv) *Synthesis of biological, psychological, spiritual, and social aspects of the resident's condition.*

[(51)] (53) Nursing [Overview] *Oversight*.

(a) "Nursing [Overview] *Oversight*" means a process by which a registered nurse assures that the health and psychosocial needs of the resident are met.

(b) "Nursing [Overview] *Oversight*" includes:

(i) Observation;

(ii) Assessment;

(iii) Staff education; and

(iv) The development, implementation, and evaluation of a resident's service plan.

[(52)] (54) "Occasional" means occurring from time to time, on an infrequent or irregular basis, with no particular pattern.

[(53)] (55) "Office of Health Care Quality (OHCQ)" means the Office of Health Care Quality of the Department of Health and Mental Hygiene.

[(54)] (56) "Ongoing" means continuing over an extended period of time.

[(55)] (57) "Permanent intravenous access device" means an access device that is not temporary in nature and is secured in place by a means such as suturing or implantation under the skin.

[(55)] (58) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

[(56)] (59) "Personal representative" means an individual appointed by the court with the duties and authority to settle and distribute the estate of the decedent.

(60) *"Personal care services" includes, but is not limited to, the range of assistance needed by a resident to complete activities of daily living.*

[(57)] (61) "Physical abuse" means the sustaining of any physical injury or pain to a resident as a result of cruel or inhumane treatment, or as a result of a malicious act by any individual.

[(58)] (62) Physical Restraint.

(a) "Physical restraint" means the use of a device or physical action to prevent, suppress, or control head, body, or limb movement, that cannot be readily and easily removed by the resident.

(b) "Physical restraint" does not mean a protective device as defined in this regulation.

[(59)] (63) "Plan of correction" means a written response from the assisted living program that addresses each deficiency cited as a result of an inspection by the Department.

(64) *"Program" means an assisted living program.*

[(60)] (65) "Protective device" means any device or equipment, except bed side rails:

(a) That:

(i) Shields a resident from self-injury;

(ii) Prevents a resident from aggravating an existing physical problem; or

(iii) Prevents a resident from precipitating a potential physical problem;

(b) That may limit, but does not eliminate, the movement of the resident's head, body, or limbs;
and

(c) That is prescribed by a physician.

[(61)] (66) "Quality assurance" means a system for maintaining professionally acceptable standards of care by:

(a) Identifying opportunities to improve;

(b) Studying problems if any, and their root causes; and

(c) Implementing and monitoring interventions to ensure the intended improvement is achieved and sustained.

[(62)] (67) "Relief personnel" means qualified individuals who have been hired to substitute for staff members:

(a) In emergency situations; or

(b) When the [assisted living] manager or other staff is absent from the program for extended hours.

[(63)] (68) "Representative" means a person referenced in Regulation [.34] .30 of this chapter.

[(64)] (69) "Resident" means an individual 18 years old or older who requires assisted living services.

[(65)] (70) "Resident agreement" means a document signed by both the resident or the resident's agent and the assisted living manager, or designee, stating the terms that the parties agree to, including, at a minimum, the provisions set forth in Regulations [.24] .20 and [.25] .21 of this chapter.

[(66)] (71) ["Resident Assessment Tool" means Maryland's Assisted Living Resident Assessment and Level of Care Scoring Tool (DHMH Form 4506) that is:] *Resident Assessment Tool*.

(a) "*Resident Assessment Tool*" means Maryland's Assisted Living Resident Assessment Tool (DHMH Form XXXX) that is:

[(a)] (i) Incorporated by reference in Regulation .03 of this chapter; and

[(b)] (ii) Used by assisted living facilities to assess the current health, physical, and psychosocial status of prospective and current residents.

(b) *“Resident Assessment Tool” does not include or replace a nursing assessment.*

[(67)] (72) Restraint.

(a) "Restraint" means any chemical restraint or physical restraint as defined in §B(16) and (58) of this regulation.

(b) "Restraint" does not include a protective device.

[(68)] (73) "Sanction" means a disciplinary penalty imposed for a violation of statutes or regulations relating to the operation of an assisted living program, including but not limited to, those penalties referenced in Regulations [.56, .57, .60, .62, and .63] .51, .52, .55., 57, and .58 of this chapter.

[(69)] (74) "Secretary" means the Secretary of Health and Mental Hygiene, or the Secretary's designee.

[(70)] (75) "Self-administration of medication" means a resident having the cognitive and physical ability to take medication as prescribed by an authorized prescriber:

(a) At the correct time;

(b) By the correct route; and

(c) In the correct dosage.

[(71)] "Service plan" means a written plan developed by the licensee, in conjunction with the resident and the resident's representative, if appropriate, which identifies, among other things, services that the licensee will provide to the resident based upon the resident's needs as determined by the Resident Assessment Tool.]

(76) "Service plan" means a written plan incorporated by reference in Regulation .03 of this chapter that is developed by the licensee, in conjunction with the resident or resident's representative which identifies, among other things, services that the licensee will provide to the resident based upon the resident's needs as determined by the:

(a) Resident Assessment Tool; and

(b) Nursing Assessment.

[(72)] (77) "Sexual abuse" means a crime listed in Criminal Law Article, Title 3, Subtitle 3, Annotated Code of Maryland.

[(73)] (78) ["Short-term residential care" means a stay, either continuous or intermittent, in an assisted living program of not more than 30 days from the date of initial admission, which cannot exceed 30 days per year.] *"Short-term residential care" means a stay in an assisted living program of not more than 30 consecutive days from the date of initial admission.*

[(74)] (79) Significant Change of Condition.

(a) "Significant change of condition" means a shift in a resident's health, functional, or psychosocial conditions that either causes an improvement or deterioration in a resident's condition as described in Appendix A of the Resident Assessment Tool.

(b) "Significant change of condition" does not include any ordinary, day-to-day fluctuations in health status, function, or behavior, or an acute short-term illness, such as a cold, unless these fluctuations continue to recur.

[(75)] (80) "Staff" means supervisors, assistants, aides, or other employees, including independent contractors retained by an assisted living program, to provide the care and services required by this chapter.

(81) "Stage four pressure ulcer" means a localized injury to the skin and underlying tissue, as a result of pressure, which involves full thickness tissue loss with exposed bone, tendon or muscle, which often includes undermining and tunneling, and may include slough or eschar on some parts of the wound bed.

(82) "Stage three pressure ulcer" means a localized injury to the skin and underlying tissue, as a result of pressure, which involves full thickness tissue loss that does not expose bone, tendon or muscle and may include undermining, tunneling, and slough which does not obscure the depth of tissue loss.

[(76)] (83) "Substantial" means considerable in importance, degree, amount, frequency, or extent.

[(77)] (84) "Treatment" means medical or psychological management to cure or improve a disease or condition.

[(78)] "Unclaimed deceased resident" means a resident of an assisted living program:

- (a) Who has not prearranged and prepaid for the disposal of the resident's body; or
- (b) For whom no individual has claimed the body and assumed funeral or burial responsibility.]

[(79)] (85) "Verbal abuse" means the use of any oral or gestured language that includes disparaging or derogatory terms, which is directed to a resident, or within a resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

.03 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference:

A. Maryland's Assisted Living Resident Assessment [and Level of Care Scoring] Tool, DHMH Form [#4506, November 2006], XXXX, *June 2012*, Maryland Department of Health and Mental Hygiene, Office of Health Care Quality;

B. Maryland Assisted Living Program Uniform Disclosure Statement, DHMH Form # 4662, [November 2006] *February 2009*, Maryland Department of Health and Mental Hygiene, Office of Health Care Quality;

C. Maryland Assisted Living Service Plan, DHMH Form # XXXX, June 2012, Maryland Department of Health and Mental Hygiene, the OHCQ;

[C.] *D. 42 CFR §§484.18, 484.30, and 484.32;*

[D.] *E. Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health-Care Facilities, which is incorporated by reference in COMAR 10.07.02.01-1;*

F. Application for Controlled Dangerous Substances Registration, DHMH Form #XXXX, May 2012, Maryland Department of Health and Mental Hygiene, Division of Drug Control;

[E.] *G. The Life Safety Code, NFPA 101, which is incorporated by reference in COMAR 29.06.01; and*

[F.] *H. The State Fire Prevention Code, which is incorporated by reference in COMAR 29.06.01.*

.04 License Required.

A. A person may not operate an assisted living program in this State without obtaining a license from the Secretary and complying with the requirements of this chapter.

B. Providing housing under a landlord-tenant arrangement does not, in and of itself, exclude a person from the licensure requirements of this chapter.

C. Separate Licenses Required. Separate licenses are required for assisted living programs that are maintained on the same or separate premises, even though the programs are operated by the same person.

D. The Secretary shall issue a license for a specified number of beds [and a specified level of care. A licensee may not provide services beyond its licensed authority].

E. A program shall include residents admitted for short-term residential care and family members who are cared for by program staff in the program's census, which shall not exceed the licensed number of beds.

F. A licensee may not provide services beyond its licensed authority.

[E.] G. The Secretary may issue a joint license with a local health department under this chapter.

[F. Posting of License. An assisted living] (H.) A program shall conspicuously post its license at the facility.

[G.] (I) Failure to comply with this chapter and any other applicable State and local laws and regulations is grounds for sanctions, as specified in Regulations [.56—.64] .51—.59 of this chapter.

[.05 Levels of Care.]

[.06] .05 Restrictions.

A. Nomenclature about Additional Appropriate Licensure. An assisted living program licensed under this chapter may not use in its title or advertising the words "hospital", "sanitarium", "nursing", "convalescent", "rehabilitative", "sub-acute", or "hospice".

B. Advertising.

(1) Prohibited Terms. A person operating an assisted living program may not use the term "assisted living" in its advertising without being licensed as an assisted living program by the Department.

(2) Misleading or False Advertising.

(a) A person may not advertise, represent, or imply to the public that an assisted living program is authorized to provide a service that the program is not licensed, certified, or otherwise authorized by the Department to provide when the license, certificate, or authorization is required under this chapter.

(b) A person may not advertise an assisted living program in a misleading or fraudulent manner.

C. Drop-In or Day Services. An assisted living program may not provide day, partial, or hourly adult day care services without appropriate adult medical day care licensure. However, an individual who has applied for admission or who has been admitted to the assisted living program may, for a reasonable period of time not to exceed 30 days, transition to the program in increments of partial days before becoming a resident. All regulations of this chapter apply to services and care provided during this transition period.

D. An assisted living program dually licensed as an adult medical day care program or any other licensed program must meet all requirements for both programs. One program's activities shall not infringe upon the operation of the other program.

[D.] E. A person who falsifies or alters an assisted living license shall be subject to referral for criminal prosecution and imposition of civil fines.

[.07] .06 Licensing Procedure.

A. Application for License.

- (1) To obtain and maintain a license, an applicant shall meet all of the requirements of:
 - (a) This chapter;
 - (b) Other applicable federal, State, and local laws and regulations; and
 - (c) Health-General Article, §19-311, Annotated Code of Maryland, if the program provides services to 17 or more residents.
- (2) An applicant shall submit:
 - (a) An application on a form developed by the Department;
 - (b) The completed Uniform Disclosure Statement on a form developed by the Department; and
 - (c) A nonrefundable license fee.
- (3) Fees. The annual license fee schedule for [assisted living] programs is as follows:
 - (a) 1—3 beds: \$100;
 - (b) 4—15 beds: \$150; and
 - (c) 16 or more beds: \$150 plus \$8 per bed for each bed over 15.
- (4) If a facility fails to comply with the regulations of this chapter and requires the Department to conduct more than one on-site pre-licensure visit, the Department may:
 - (a) Charge \$250 per additional on-site visit; or
 - (b) Deny the license.
- (5) *If a facility fails to file a timely renewal application, the facility shall pay a late fee of \$10 per day, which shall begin accruing on the license's expiration date, in addition to the renewal fee.*
- [(5)] (6) At a minimum, the applicant shall provide:
 - (a) Verification that the applicant or corporate representative is 21 years old or older;

- (b) Documentation of any prior denial, suspension, or revocation of a license or certification to provide care to third parties;
- (c) Identification of any individual or corporate owner of 25 percent or more interest in the assisted living program;
- (d) *Signed disclosure form, provided by the Department, of any previous convictions and* [D]documentation of any conviction [and current criminal background check or criminal history records check] of the owner, applicant, [assisted living] manager, alternate [assisted living] manager, other staff, and any household member;
- (e) Ownership information as specified on an addendum to the application;
- (f) Verification that the facility is owned, leased, or otherwise under the control of the applicant;
- (g)[The level of care to be provided by the assisted living program, its location, and the name of the proposed assisted living manager;] *The program's location and the name of the proposed manager;*
- (h) Documentation of zoning approval, if zoning approval is required by the local jurisdiction in which the assisted living program will be located; and
- (i) Where applicable, approvals from the local health department, local or State fire authority, and local area agency on aging.

B. Additional Requirements for Initial Licensure.

- (1) The Secretary shall require an applicant for initial licensure to submit:
 - (a) Information concerning any license or certification held by the applicant under Health Occupations Article or Health-General Article, Annotated Code of Maryland including the prior or current operation by the applicant of a health care facility or similar health care program;

(b) Information demonstrating financial [or] *and* administrative ability to operate [an assisted living] *a* program in compliance with this chapter, which shall include a business plan and 1-year operating budget;

(c) Policies and procedures to be implemented as designated in the application for licensure; and

(d) Other reasonably relevant information, if required by law or local jurisdiction, such as:

(i) Verification of Workers' Compensation insurance;

(ii) Facility plan review documentation;

(iii) Food service permit; and

(iv) Rental license.

(2) The owner, manager, alternate manager, or board member of an assisted living program that has had its license suspended or revoked by the Department may not own, operate, lease, or manage another assisted living program for 10 years without good cause shown. After 10 years, the applicant shall submit evidence to the Department that the applicant is capable of owning, managing, or operating an assisted living program.

(3) If an owner, manager, or alternate manager of an assisted living program operates, leases, or manages an assisted living facility and the facility has had sanctions imposed or deficiencies cited within the last 2 years and has not corrected the deficiencies which present a risk to the health or safety of residents for a currently licensed assisted living facility, that owner, manager, or alternate manager may not apply to open an additional assisted living facility until those deficiencies have been corrected as approved by the Department.

(4) The Department reserves the right to deny licensure for [an assisted living] *a* program based on the owner's or manager's prior:

(a) History of violations of assisted living regulations; [or]

(b) [Criminal history that the Department determines may be potentially harmful to residents.]

Convictions of the following crimes:

(i) a conviction as described in 42 U.S.C. § 1320A–7(A); or

(ii) a conviction as described in Criminal Law Article, §14-101, Annotated Code of Maryland; or

(c) Behavior which shows the owner or manager cannot be trusted to comply with statutes and regulations related to the operation of assisted living programs.

(5) In making a determination about a license application, the Department shall consider the following factors:

(a) The age at which the crime was committed;

(b) The circumstances surrounding the crime;

(c) The length of time that has passed since the crime;

(d) Subsequent work history;

(e) Employment and character references; and

(f) Other evidence that demonstrates whether the applicant poses a threat to the public health or safety.

[(5)] (6) Based on information provided to the Department by the applicant and the Department's own investigation, the Secretary shall:

(a) Approve the application unconditionally;

(b) Approve the application conditionally, which may include, among other conditions, requiring the applicant to use the services of a management firm approved by the Secretary; or

(c) Deny the application.

[(6)] (7) The Secretary may not require use of a management firm for a period in excess of 24 months.

[(7)] (8) A licensee may not:

(a) Operate an assisted living program until a provisional license or license has been issued; or

(b) Operate multiple sites until each site has been inspected and approved by the Department.

(8) A person aggrieved by a decision of the Secretary under this section to deny a license application may appeal the Secretary's action by filing a request for a hearing consistent with Regulation [.64] .59 of this chapter.

C. Duration of License.

(1) A license is valid for 2 years from the date of issuance, unless suspended or revoked.

(2) License Renewal. A licensee shall apply for license renewal:

(a) At least [30] 14 days before the expiration of its current license;

(b) On forms provided by the Department; and

(c) By submitting a license renewal fee based on the fee schedule in §A(3) of this regulation.

D. Licenses for Less than 2 Years. The Department may issue a provisional license if:

(1) [An assisted living] A program is not in full compliance with this chapter:

(a) But in the opinion of the Department, the noncompliance does not constitute a safety or health hazard; and

(b) The applicant or licensee has submitted a plan of correction acceptable to the Department which satisfactorily addresses the correction of each deficiency within a time frame acceptable to the Department; [or]

(2) Departmental administrative delays have occurred which:

(a) Are beyond the control of the applicant or licensee;

(b) Have prevented the Department from completing its licensure activity[.] ; *or*

(3) A licensee has failed to file a timely and sufficient renewal application but has subsequently filed a sufficient renewal application and paid all required fees.

[.08] .07 Changes in a Program that Affect the Operating License.

A. Increase in Capacity or Name Change.

(1) During the license period, a licensee may not increase capacity, change its name, or change the name under which the program is doing business, without the Department's approval. When there is a change of program ownership or a change of location, the licensee shall submit a new application and written request for a new license and an application fee, as established in Regulation [.07A(3)] .06A(3) of this chapter to the Department.

(2) Sale, Transfer, or Lease of a Facility.

(a) If a sale, transfer, or lease of a facility causes a change in the person or persons who control or operate the assisted living program, the assisted living program shall be considered a new program and the licensee shall apply for a new license and conform to all regulations applicable at the time of transfer of operations.

[(b) The transfer of any stock which results in a change of the person or persons who control the program or the transfer of any stock in excess of 25 percent of the outstanding stock, constitutes a sale.]

[(c) (b) For the purposes of Life Safety Code enforcement the program is considered an existing facility if it has been in continuous use as an assisted living program.

(3) The Department shall issue a new license on approval of:

(a) [A change in] licensure capacity;

(b) A change in the name of the licensee; *or*

(c) [A change in] the name under which the program is doing business.

(4) The licensee shall return its original license to the Department by certified mail.

B. Voluntary Closure or Change of [Assisted Living] Program Ownership or Location.

(1) A licensee shall notify the Department in writing at least 45 days in advance of any intention to:

(a) Voluntarily close;

(b) Change ownership;

(c) Change location; or

(d) Sell its assisted living program.

(2) The licensee shall include the following information in the notice to the Department:

(a) The method for informing residents and resident representatives of its intent to close, change ownership, change location, or sell its assisted living program; and

(b) The actions the licensee will take to assist residents in securing comparable housing and assistance, if necessary.

(3) A licensee shall notify residents and resident representatives of any proposed changes set forth in §B(1) of this regulation, in writing, at least 45 days before the effective date of the proposed change.

(4) Whenever ownership of an assisted living program is transferred from the person or organization named on the license to another person or organization, the future owner shall apply for a new license. The future owner shall file an application for a license at least 45 days before the final transfer.

(5) The Department shall issue a new license to a new owner if the new owner meets the requirements for licensure under this chapter. The current licensee shall return its license to the Department by certified mail.

(6) A licensee named in the original license shall remain responsible for the operation of the assisted living program until a new license is issued to the new owner and the current licensee shall remain responsible for correction of all outstanding deficiencies or impending sanctions until a new license is issued to the new owner.

(7) If a licensee intends to relocate its program, the licensee shall apply for a new license in time to assure continuity of services to the residents. The Secretary shall issue a new license for the new location if the program meets the requirements for licensure under this chapter. The licensee shall return its original license to the Department by certified mail.

(8) In addition to the notice to the Department required by §B of this regulation, after a program closes, the licensee shall:

- (a) Notify the Department of the date of closure and the place of relocation of each resident; and
- (b) Return all licenses, past and present, to the Department by certified mail.

C. Changes to Licensure Information.

(1) A licensee shall immediately notify the Department of any change in the information the licensee had submitted with the most recent application.

(2) A licensee shall forward to the Department a copy of any report or citation of a violation of any applicable building codes, sanitary codes, fire safety codes, or other regulations affecting the health, safety, or welfare of residents within 7 days of receipt of the report or citation.

D. License—Sale, Assignment, or Other Transfer.

(1) A license is valid only in the name of the licensee to whom it is issued, and is not subject to sale, assignment, or other transfer.

(2) A license is valid only for the premises for which it was originally issued.

E. A license is void and shall be returned to the Department by certified mail if the program ceases to provide services to residents for a period of 120 consecutive days.

F. Surrender of License.

(1) Unless the Department agrees to accept the surrender of a license, a licensee may not surrender a license to operate an assisted living program nor may the license lapse by operation of law while the licensee is under investigation or while charges are pending against the licensee.

(2) The Department may set conditions on its agreement with the licensee under investigation or against which charges are pending to accept surrender of the license.

(3) If a sufficient renewal application had not been filed at least 14 days before a license has expired, after the license expires the licensee shall cease operating the assisted living program and relocate residents in accordance with the Department's instructions unless a provisional or renewal license has been granted in accordance with Regulation .06D of this chapter.

[.09] .08 Licensure Standards Waiver.

A. The Department may grant [an assisted living program] a licensee a waiver from the licensure requirements of this chapter with, or without, conditions.

[B. The Department may not, however, grant a waiver from the requirements of Regulation .22I of this chapter. If, however, two individuals having a long-term or otherwise significant relationship wish to be admitted to a program in order to reside in the program together, and one

of the individuals requires care as defined in Regulation .22I of this chapter, the Department may grant a waiver consistent with the process established in Regulation .22 of this chapter.]

B. Application for Licensure Standards Waiver.

(1) A licensee shall submit a request for a waiver under this regulation on a form developed by the Department.

(2) The requestor shall provide in writing:

(a) The regulation from which a waiver is sought;

(b) The reason the licensee is unable to comply with the regulation;

(c) The reason that compliance with the regulation will impose a substantial hardship; and

(d) The reason that a waiver will not adversely affect residents.

[D.] *C. Evaluation of Application for Licensure Standards Waiver.* In evaluating a waiver request submitted under this regulation, the Department shall review the statements in the application, and may:

(1) Inspect the [assisted living] program;

(2) Confer with the [assisted living] manager or designee; or

(3) Discuss the request with residents or their representatives to determine whether they believe a waiver is in the residents' best interest.

[E.] *D. Grant or Denial of Licensure Standards Waiver.*

(1) The Department may grant a waiver request if it determines that:

(a) Compliance with the regulation from which the waiver is sought cannot be accomplished without substantial hardship; and

(b) A waiver will not adversely affect residents.

(2) If the Department determines that the conditions of §[E]D(1) of this regulation are not met, the Department shall deny the request for a waiver. The denial of a waiver may not be appealed.

[F.] *E. Written Decision.* The Department shall issue and mail to the applicant a final written decision on a waiver request submitted under §A of this regulation within 45 days from receipt of the request and all appropriate supporting information. If the Department grants the waiver, the written decision shall include the waiver's duration and any conditions imposed by the Department.

[G.] *F.* If [an assisted living program] *a licensee* violates any condition of the waiver, or if it appears to the Secretary that the health or safety of residents residing in the assisted living program will be adversely affected by the continuation of the waiver, a waiver may be revoked. The revocation of a waiver may not be appealed.

[.10] .09 Uniform Disclosure Statement.

A. When [an assisted living program] *a licensee* changes the services [reported] on its Uniform Disclosure Statement filed with the Office of Health Care Quality [under Regulation .07A(2)(b) of this chapter], the [program] shall file an amended Uniform Disclosure Statement with the Office within 30 days of the change in services.

B. If an individual requests a copy of [an assisted living] *a program's* Uniform Disclosure Statement, the [assisted living program] *licensee* shall provide a copy of the Uniform Disclosure Statement on a form provided by the Department without cost to the individual making the request.

C. [An assisted living program] *A licensee* shall provide a copy of the current Uniform Disclosure Statement to individuals as part of the program's marketing materials.

[.11] .10 Investigation by Department.

A. [Assisted Living Program to Be] Open for Inspection.

(1) An assisted living program operated by a licensee, and any premises proposed to be operated as an assisted living program, shall be open at all times to announced or unannounced inspections by the Department and by any agency designated by the Department.

(2) Any part of the facility, and any surrounding accessory buildings which may be entered by staff or residents, are considered part of the facility and are subject to inspection.

B. Records and Reports.

(1) Inspection.

(a) A licensee shall maintain records and make reports as required by the Department. The records and reports shall be open to inspection by the Department or its designee.

(b) Except for the records permitted to be stored off-site, a licensee or licensee's designee shall immediately, upon request, provide copies of records and reports, including medical records of residents, to the Department or its designee. The Department or its designee shall, if requested, reimburse the licensee for the cost of copying the records and reports.

(2) Maintenance.

(a) The [assisted living program] *licensee* shall maintain files on-site pertaining to:

(i) Current residents;

(ii) Residents who have been discharged within the last 6 months;

(iii) Staff; and

(iv) Quality assurance activities.

(b) These files listed in §B(2)(a) of this regulation shall be maintained on-site where residents are being cared for.

(c) All other records may be stored off-site, but shall be available for inspection within 24 hours of the Department's request or request of the Department's designee.

C. [An assisted living program] *A licensee* shall post the following documents in a conspicuous place that is visible to residents, potential residents, and other interested parties:

(1) All of the following:

(a) Any statement of deficiencies for the most recent survey;

(b) Any findings from complaint investigations conducted by State or local surveyors after the most recent licensure survey; and

(c) Any plans of correction in effect with respect to the most recent survey or subsequent complaint investigation; or

(2) A notice describing where in the facility the items listed in §C(1) of this regulation may be found.

D. Notice of Violations.

(1) If a complaint investigation or survey inspection identifies a regulatory violation, the Secretary shall issue a notice:

(a) Citing the violation or deficiency;

(b) Requiring the [assisted living program] *the licensee* to submit an acceptable plan of correction within 10 calendar days of receipt of the notice of violation or deficiency;

(c) Notifying the [assisted living program] *the licensee* of sanctions or that failure to correct the violation may result in sanctions; and

(d) Offering the [assisted living program] *the licensee* the opportunity for informal dispute resolution (IDR).

(2) The plan of correction referred to in §D(1)(b) of this regulation shall include the date by which the licensee shall complete the correction of each deficiency. Failure to return an acceptable plan of correction within the allotted time frame may result in a sanction.

(3) When a licensee requests an IDR as provided in §E of this regulation, the licensee shall file a plan of correction within the required time, except to the extent that the licensee contests specific findings, in which case absent the Department's specific directive, a licensee may delay submitting its plan of correction with respect to those specific findings until 5 days after the licensee is provided oral or written notice of the outcome of the IDR.

E. Informal Dispute Resolution.

(1) A licensee may request informal dispute resolution (IDR) to question violations or deficiencies within 10 calendar days of receiving the statement of deficiencies. The written request for an IDR shall fully describe the disagreement with the statement of deficiencies and be accompanied by any supporting documentation.

(2) At the discretion of the Office of Health Care Quality, the IDR may be held in-person, by telephone, or in writing. In-person IDRs are informal in nature and are not attended by counsel.

(3) The IDR process may not delay the effective date of any enforcement action.

(4) In the event a licensee requests an IDR of a violation written by a designee of the Department, the Department shall request the designee to participate in the IDR process.

[.12] .11 Compliance Monitoring.

- A. The Department shall be responsible for monitoring and inspecting [assisted living] programs to ensure compliance with the regulatory requirements of this chapter.
- B. Consistent with an interagency agreement, the Department may delegate certain aspects of its monitoring, inspection, or waiver responsibilities to the Department of Aging or a local health department.
- C. The Department or its designee may conduct announced or unannounced licensure or complaint investigation visits.
- D. [An assisted living] A program shall be surveyed on-site, at least annually. The Department may extend the time between surveys to up to 15 months if it determines that a licensee has demonstrated satisfactory compliance with this chapter.
- E. The Department, or those agencies delegated responsibility under this regulation, may inspect an assisted living program more frequently than annually through follow-up surveys, if it is considered necessary to ensure compliance with this chapter or for the purpose of investigating a complaint.

[.13] .12 Administration.

A. Quality Assurance.

- (1) The [assisted living program] *manager* shall develop and implement a quality assurance plan.
- (2) Quality Assurance Plan.
 - (a) The [assisted living] manager and the delegating nurse/*case manager* shall meet at least every 6 months to review the:
 - (i) Change in status of the program's residents;
 - (ii) Outcomes of pharmacy reviews;

(iii) Service plan requirements; and

(iv) Written recommendations or findings of the consultant pharmacist, as required by Regulation [.29J] .25G of this chapter.

(b) The [assisted living] manager shall document the proceedings of the meeting referred to in §A(2)(a) of this regulation.

B. Family Council.

(1) If [assisted living] program residents have a family council, the assisted living program shall make reasonable attempts to cooperate with the family council.

(2) The family council for [an assisted living] *a* program may consist of the following members:

(a) Members of a current resident's family; or

(b) An individual appointed by a current resident, or if the resident is incapable of appointing an individual, an individual appointed by the resident's family.

C. Resident Councils.

(1) If [an assisted living] *a* program has a resident council, the [assisted living] program shall make reasonable attempts to cooperate with the residents' council.

(2) A resident council shall consist of current residents of the assisted living program.

[.14] .13 Staffing [Plan].

A. Following an analysis of the number of residents that the assisted living program intends to serve and the individual needs of each resident, the licensee shall develop a staffing plan that identifies the type and number of staff needed to provide the services required by this chapter.

B. The staffing plan shall include on-site staff sufficient in number and qualifications to meet the 24-hour scheduled and unscheduled needs of the residents. When a resident is in the facility, a staff member shall be present.

C. A staffing schedule shall be maintained on-site which identifies the date, shift hours, and full name of all staff members scheduled to work.

D. The resident's care needs shall determine:

(1) The services provided to the resident by the program, in accordance with §E of this regulation;

(2) When awake overnight staff is required;

(3) The need for on-site nursing services; and

(4) The need, amount, and frequency of nursing oversight by the registered nurse.

E. A program shall have staff with the ability to:

(1) Recognize and accurately describe and define a resident's health condition and identify likely causes and risks associated with the residents' condition;

(2) Provide or ensure ongoing access to and coordination of comprehensive health services and interventions including nursing oversight;

(3) Provide or ensure comprehensive support as frequently as needed to compensate for any number of activities of daily living deficits;

(4) Provide or ensure assistance with taking medication;

(5) Administer necessary medication and treatment, including monitoring or arranging for monitoring of the effects of complex medication and treatment regimens;

(6) Monitor and provide or ensure ongoing therapeutic intervention or intensive supervision to manage chronic behaviors which are likely to disrupt or harm the resident or others;

(7) Manage a variety of psychological or psychiatric episodes involving active symptoms, condition changes, or significant risks that may require skilled interpretation or immediate interventions; and

(8) Provide or ensure ongoing access to comprehensive social and recreational services.

[C. Awake Overnight Staff. An assisted living program shall provide awake overnight staff when a resident's assessment using the Resident Assessment Tool, as provided in Regulation .21A or .26B of this chapter, indicates that awake overnight staff is required according to instructions on that tool. If a physician or assessing nurse, in the physician's or nurse's clinical judgment, does not believe that a resident requires awake overnight staff, the physician or assessing nurse shall document the reasons in the area provided in the Resident Assessment Tool. The licensee shall retain this documentation in the resident's record.]

F. Awake Overnight Staff.

(1) A licensee shall provide awake overnight staff when a Resident Assessment Tool, as provided in Regulation .18 of this chapter, indicates that a resident requires awake overnight staff.

(2) If the assessing health care practitioner, in their clinical judgment, does not believe that a resident requires awake overnight staff, the health care practitioner shall document the reasons in the area provided in the Resident Assessment Tool.

(3) The licensee shall retain this documentation in the resident's record.

[D.] *G. Electronic Monitoring Systems.*

(1) Upon the written recommendation of the [resident's physician or assessing nurse] the health care practitioner, the [assisted living program] may apply to the Department for a waiver in accordance with Regulation [.09] .08 of this chapter to use an electronic monitoring system instead of awake overnight staff.

(2) If an electronic monitoring system is approved by the Department for the assisted living program to use, the licensee shall document the approval of the electronic monitoring system in the area provided on the Resident Assessment Tool.

(3) When a resident is assessed or reassessed using the Resident Assessment Tool, as provided in Regulation [.21A or .26B] .18 of this chapter, the [physician or assessing nurse] *health care practitioner* shall review and document:

(a) The need for awake overnight staff if the resident's previous assessment or review of an assessment indicated awake overnight staff was not necessary at the time; and

(b) The continued appropriateness of a waiver to use an approved electronic monitoring system instead of awake overnight staff.

(4) *The licensee shall comply with applicable requirements of COMAR 10.27.09.*

[E.] H. On-Site Nursing Requirements.

(1) [An assisted living] A program shall provide on-site nursing when a delegating nurse/*case manager* or [physician] *health care practitioner*, based upon the needs of a resident, issues a nursing or clinical order for that service.

(2) If [an assisted living] manager determines that a nursing or clinical order should not or cannot be implemented, the manager, delegating nurse/*case manager*, and resident's [physician] *health care practitioner* shall discuss any alternatives that could safely address the resident's needs. The [assisted living] manager shall document in the resident's record this discussion and all individuals who participated in the discussion.

(3) If there are alternatives that could safely address the resident's needs, the [assisted living] manager shall notify the resident and, if appropriate, the resident's legal representative, the delegating nurse/*case manager*, and resident's [physician] *health care practitioner* of the change

to the order. The assisted living manager shall document in the resident's record this change and the date of notification.

(4) If a manager fails to implement a nursing or clinical order without identifying and providing alternatives to the care or service order, the delegating nurse/*case manager* shall notify the resident's physician, the OHCQ, and the resident or, if appropriate, the legal representative of the resident.

(5) Failure to implement a nursing or clinical order, without demonstrating why the order should not be followed or without identifying alternatives to care, may result in sanctions against [the assisted living program.] *the licensee*.

[F.] *I.* On-site nursing personnel shall work in partnership with the delegating nurse/*case manager* and [assisted living] program staff to ensure:

- (1) Adequate assessment of residents;
- (2) Planning of medical services; and
- (3) Oversight of nursing activities.

[.15 Assisted Living Manager]

.14 Requirements for All Staff

A. The licensee shall employ or contract with sufficient numbers of staff to ensure that the program is capable of meeting the requirements of this chapter, and all other applicable laws and regulations, in a manner consistent with the philosophy of assisted living and in compliance with generally accepted standards of care for the specific conditions of the residents the program intends to serve.

B. Relief personnel shall be available at all times in the event that the regularly scheduled staff members are unavailable. Relief personnel shall meet the requirements of §C and §D of this regulation.

C. Age Requirements. At a minimum:

(1) The manager and alternate manager shall be 21 years old or older; and

(2) All other staff shall be 18 years old or older.

D. The manager, alternate manager, and all other staff shall at a minimum:

(1) Be free from tuberculosis in a communicable form in accordance with Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health-Care Facilities (that is, tuberculin skin testing (TST) or chest x-ray, if indicated, within one year before employment or annual sign/symptom screen for those individuals with previous positive TST);

(2) Be immune to measles, mumps, rubella, and varicella (chicken pox) as evidenced by antibody serology or vaccine history;

(3) Be offered the influenza vaccine annually as evidenced by a documented acceptance or refusal of the vaccine during the recognized influenza season;

(4) Have a criminal background check or criminal history records check completed in accordance with Health-General Article, Title 19, Subtitle 19, Annotated Code of Maryland, within 30 days before employment, which includes a written evaluation, by the manager, of any criminal history and its relationship to assigned job duties, for any staff with a documented criminal history;

(5) Have sufficient skills, training, and experience to serve the residents in a manner that is consistent with the philosophy of assisted living;

(6) Receive initial training, prior to assuming responsibility for resident care, in:

- (a) The health and psychosocial needs of the population being served;*
- (b) The resident assessment process;*
- (c) The use of service plans;*
- (d) Cuing, coaching, and monitoring residents who self-administer medications, with or without assistance;*
- (e) Providing assistance with ambulation, personal hygiene, dressing, toileting, and feeding;*
and
- (f) Resident rights;*
- (7) Receive initial training, prior to assuming responsibility for resident care, and annual training in:*
 - (a) Fire and life safety, including the use of fire extinguishers;*
 - (b) Infection control, including standard precautions, contact precautions, and hand hygiene, based on criteria published by the Centers for Disease Control;*
 - (c) Emergency disaster plans;*
 - (d) Basic food safety;*
 - (e) Environmental safety;*
 - (f) Cognitive impairment and mental illness, as described in §I of this regulation; and*
 - (g) Responding to choking and cardiopulmonary arrests, including hands-on exercises.*
- (8) Have current certification, including documented expiration dates, if involved in direct resident care, in:*
 - (a) Basic first aid by a first aid instructor certified by a national organization; and*
 - (b) Basic cardiopulmonary resuscitation (CPR), including a hands-on component, by a CPR instructor certified by a national organization;*

(9) Hold appropriate licensure or certification as required by law; and

(10) Have additional Alzheimer's/dementia training initially and annually, beyond the requirements of this regulation, as specified in Regulation .27 of this chapter, for all staff who work in Alzheimer's/dementia special care units, including the designated unit manager.

E. A staff member who completes an approved 80-hour manager training course shall be exempt from the required annual trainings set forth in §D(7) of this regulation for a period of 4 years.

F. Proof of training shall include:

(1) Date of class;

(2) Course content;

(3) Documentation of successful completion of the training content;

(4) Signatures of the trainer and attendees; and

(5) Qualifications and contact information for the trainer.

G. Training may be provided through various means including:

(1) Classroom instruction;

(2) In-service training;

(3) Internet courses;

(4) Correspondence courses;

(5) Prerecorded training; or

(6) Other training methods.

H. When the training method does not involve direct interaction between faculty and participant, the program shall make available to the participant during the training a trained individual to answer questions and respond to issues raised by the training.

I. Training in Cognitive Impairment and Mental Illness.

(1) *When job duties involve the provision of personal care services as defined in Regulation .02B of this chapter, staff shall receive a minimum of 5 hours of initial training on cognitive impairment and mental illness. The training shall be designed to meet the specific needs of the program's population, as determined by the manager, including the content set forth in Regulation .16A(8) and (9)(a)-(c).*

(2) *When job duties do not involve the provision of personal care services, staff shall receive a minimum of 2 hours of initial training on cognitive impairment and mental illness. The training shall include the content set forth in Regulation .16A(8)(a), (b), and (c)(iii).*

(3) *Ongoing training in cognitive impairment and mental illness shall be provided annually consisting of, at a minimum:*

(a) *2 hours for staff whose job duties involve the provision of personal care services; and*

(b) *1 hour for staff whose job duties do not involve the provision of personal care services.*

[.16 Assisted Living Managers—Training Requirements.] .15 *Manager and Alternate Manager.*

A. In addition to the requirements in Regulation [.15] .14 of this chapter, [by January 1, 2006], [an assisted living manager of a program that is licensed for five beds or more shall complete a manager training course that is approved by the Department] *the manager and alternate manager shall at a minimum:*

[B. The completed manager's training course shall:

(1) Consist of at least 80 hours of course work and include an examination;

(2) Consist of training programs that include direct participation between faculty and participants; and

(3) Include not more than 25 hours of training through Internet courses, correspondence courses, tapes, or other training methods that do not require direct interaction between faculty and participants.

C. An assisted living manager employed in a program that is licensed for five or more beds shall complete 20 hours of Department-approved continuing education every 2 years.

D. A program that fails to employ an assisted manager who meets the requirements of this regulation may be subject to:

(1) Sanctions under Regulation .56 of this chapter; and

(2) A civil money penalty not to exceed \$10,000.

E. The training requirements of §A of this regulation do not apply to an individual who:

(1) Is employed by a program and has enrolled in a Department-approved manager training course that the individual expects to complete within 6 months;

(2) Is temporarily serving as an assisted living manager for less than 45 days, unless the Department has granted an extension of the 45 days, due to an assisted living manager leaving employment and before the hiring of a permanent manager;

(3) Has been employed as an assisted living manager in this State for 1 year before January 1, 2006; or

(4) Is licensed as a nursing home administrator in this State.

F. The Department may require an individual who is exempt under the provisions of §E of this regulation to complete a manager training course and examination if:

(1) The Department finds that the assisted living manager repeatedly has violated State law or regulations on assisted living; and

(2) Those violations have caused or have the potential to cause physical or emotional harm to a resident.

G. A program may request an extension from the Department to allow an individual to serve as an assisted living manager for longer than 45 days if the program has shown good cause for the extension.]

(1) Possess a high school diploma, a high school equivalency diploma, or other appropriate education and have experience to conduct the responsibilities specified in §I of this regulation;

(2) Have:

(a) A 4-year, college-level degree;

(b) 2 years experience in a health care related field and 1 year of experience as a manager or alternate manager; or

(c) 2 years experience in a health care related field and successful completion of the 80-hour manager training course;

(3) For programs licensed for 5 beds or more, have:

(a) Completed an initial 80-hour manager training course, from an institute approved by the Maryland Higher Education Commission; and

(b) Completed 20 hours of continuing education every 2 years, from vendors approved by the Department, in addition to the required annual trainings described in Regulation .14D(7) of this chapter; or

(c) Completed 10 hours of continuing education every 2 years, from an institute approved by the Maryland Higher Education Commission, in addition to the required annual trainings described in Regulation .14D(7) of this chapter.

B. A manager or alternate manager who completes an approved 80-hour manager training course shall be exempt, for a period of 4 years, from the:

- (1) Continuing education requirements set forth in this section; and*
- (2) Required annual trainings set forth in Regulation .14D(7) of this chapter.*

C. The completed manager's training course shall:

- (1) Consist of at least 80 hours of course work and include an examination;*
- (2) Consist of training courses that include direct participation between faculty and participants; and*
- (3) Include not more than 25 hours of training through Internet courses, correspondence courses, tapes, or other training methods that do not require direct interaction between faculty and participants.*

D. A manager or alternate manager who has completed the 80-hour manager's training course and passed the examination shall be presumed to have met the knowledge requirements of Regulation .14D(6)-(7).

E. The training requirements of §A(3) of this regulation do not apply to an individual who:

- (1) Is employed by a program and has enrolled in an approved manager training course that the individual expects to complete within 6 months;*
- (2) Is temporarily serving as a manager or alternate manager for less than 45 days, unless the Department has granted an extension of the 45 days, due to a manager or alternate manager leaving employment and before the hiring of a permanent manager;*
- (3) Has been employed as a manager or alternate manager in this State for 1 year before January 1, 2008; or*
- (4) Is licensed as a nursing home administrator in this State.*

F. The Department may require an individual who is exempt under the provisions of §E of this regulation to complete a manager training course and examination if:

(1) The Department finds that the manager or alternate manager repeatedly has violated State law or regulations on assisted living; and

(2) Those violations have caused or have the potential to cause physical or emotional harm to a resident.

G. The Department may determine that an individual is not sufficiently qualified to serve as a manager or alternate manager if that individual's managerial or administrative experience, or education, is not sufficient to perform the responsibilities set forth in §I of this regulation.

H. The manager shall be on-site or available on call. The alternate manager shall be available to assume the responsibilities described in §I of this regulation when the manager is not available.

I. Duties. The manager shall have overall responsibility for:

(1) Notifying the delegating nurse/case manager within 2 hours of all significant resident changes, hospitalizations, and returns to the facility;

(2) The management of the program, including recruiting, hiring, training, and supervising all staff, and ensuring that either a criminal history records check or a criminal background check is conducted consistent with the requirements of Health-General Article, Title 19, Subtitle 19, Annotated Code of Maryland;

(3) The development and implementation of a staffing plan, which includes orientation and ongoing training for all staff, with specific training in the management, assessment, and programming for the resident with cognitive impairment as required by Health-General Article, §19-319.1, Annotated Code of Maryland;

- (4) The development and implementation of all policies, programs, and services as required by this chapter;*
- (5) Providing or ensuring, through the coordination of community services, that each resident has access to appropriate medical and psychosocial services, as established in the resident service plan developed under Regulation .22 of this chapter;*
- (6) Ensuring that there is appropriate coordination of all components of a resident's service plan, including necessary transportation and delivery of needed supplies;*
- (7) Ensuring that there is appropriate oversight and monitoring of the implementation of each resident's service plan;*
- (8) Ensuring that all record keeping conforms to the requirements of this chapter and other applicable laws;*
- (9) Implementing a nursing or clinical order of the delegating nurse/case manager or documenting in the resident's record why the order should not be implemented;*
- (10) Collaborating with the pharmacist, delegating nurse/case manager, and prescriber to ensure the pharmacy recommendations as described in Regulation .25 of this chapter are implemented or documenting in the resident's record why the recommendation should not be implemented;*
- (11) Ensuring that all requirements of this chapter and other applicable laws are met;*
- (12) Notifying the OHCQ:*
 - (a) When the manager terminates the program's contract with or employment of a delegating nurse/case manager; and*
 - (b) Of the reason why the contract or employment was terminated;*
- (13) Notifying the resident, the resident's representative, or interested family member of any:*

- (a) Significant change in condition of the resident;
 - (b) Adverse event that may result in a change in condition;
 - (c) Outcome of the resident's care that results in an unanticipated consequence; and
 - (d) Corrective action, if any; and
- (14) Ensuring all residents and staff are aware of the option of an annual influenza vaccine as evidenced by documented acceptance or refusal of the vaccine, and documented surveillance of non-immune staff during the recognized flu season.

[.17 Assisted Living Manager Training—Basic Courses.] .16 Manager Training Course

A. [The assisted living manager's training shall include the following courses:] *The 80-hour manager's training shall include the following courses:*

- (1) Philosophy of assisted living, 2 hours, including:
 - (a) Philosophy and background of assisted living and aging in place;
 - (b) Objectives and principles of assisted living resident programs;
 - (c) Comparison of assisted living to other residential programs;
 - (d) Basic concepts of choice, independence, privacy, individuality, and dignity; and
 - (e) Normalization of the environment;
- (2) Aging process and its impact, 4 hours, including:
 - (a) Physical characteristics of the assisted living residents;
 - (b) Psychosocial characteristics of the assisted living residents;
 - (c) Basic needs of the elderly and disabled; and
 - (d) Activities of daily living;
- (3) Assessment and level of care waiver, 6 hours, including:

- (a) Purpose and process;
- (b) Guidelines for conducting assessments;
- (c) Level of care assessments; and
- (d) Collaboration with case manager and delegating nurse;
- (4) Service planning, 6 hours, including:
 - (a) Required services;
 - (b) Enhanced scope of services;
 - (c) Development of individualized service plans;
 - (d) Scheduling of appropriate activities;
 - (e) Structure of activities;
 - (f) Care notes; and
 - (g) Collaboration with case manager and delegating nurse;
- (5) Clinical management, 20 hours, including:
 - (a) Role of the delegating nurse;
 - (b) Appropriate nurse delegation;
 - (c) Concept of self-administration of medications;
 - (d) Concept of medication management;
 - (e) Assistance with self-administration of medications;
 - (f) Administration of medications;
 - (g) Coordination of services and care providers;
 - (h) Collaboration with case manager and delegating nurse;
 - (i) Preventing medication errors;
 - (j) Patient safety;

- (k) Medication monitoring;
- (l) Pharmacy consultation;
- (m) Medication storage;
- (n) Infection control, to include standard precautions, contact precautions, and hand hygiene;
- (o) Appropriate staffing patterns;
- (p) Pressure sores;
- (q) Effective pain management;
- (r) Basic first aid;
- (s) Cardiopulmonary resuscitation (CPR); and
- (t) Substance abuse;
- (6) Admission and discharge criteria, 4 hours, including:
 - (a) Overview of criteria for admission and discharge;
 - (b) Resident contracts;
 - (c) Resident rights;
 - (d) Financial management of resident's funds; and
 - (e) Working with families of residents;
- (7) Nutrition and food safety, 8 hours, including:
 - (a) Menu and meal planning;
 - (b) Basic nutritional needs;
 - (c) Safe food handling;
 - (d) Preventing food-borne illnesses;
 - (e) Therapeutic diets; and
 - (f) Dehydration;

- (8) Dementia, mental health, and behavior management, 12 hours, including:
 - (a) An overview consisting of:
 - (i) Description of normal aging and conditions causing cognitive impairment;
 - (ii) Description of normal aging and conditions causing mental illness;
 - (iii) Risk factors for cognitive impairment;
 - (iv) Risk factors for mental illness;
 - (v) Health conditions that affect cognitive impairment;
 - (vi) Health conditions that affect mental illness;
 - (vii) Early identification and intervention for cognitive impairment;
 - (viii) Early identification and intervention for mental illness; and
 - (ix) Procedures for reporting cognitive, behavioral, and mood changes;
 - (b) Effective communication consisting of:
 - (i) Effect of cognitive impairment on expressive and receptive communication;
 - (ii) Effect of mental illness on expressive and receptive communication;
 - (iii) Effective communication techniques, including verbal, nonverbal, tone and volume of voice, and word choice; and
 - (iv) Environmental stimuli and influences on communication, including setting, noise, and visual cues;
 - (c) Behavioral intervention consisting of:
 - (i) Identifying and interpreting behavioral symptoms;
 - (ii) Problem solving for appropriate intervention;
 - (iii) Risk factors and safety precautions to protect other residents and the individual;
 - (iv) De-escalation techniques; and

- (v) Collaboration with case manager or delegating nurse;
- (d) Making activities meaningful consisting of:
 - (i) Understanding the therapeutic role of activities;
 - (ii) Creating opportunities for activities, including productive, leisure, and self-care; and
 - (iii) Structuring the day;
- (e) Staff and family interaction consisting of:
 - (i) Building a partnership for goal-directed care;
 - (ii) Understanding family needs; and
 - (iii) Effective communication between family and staff;
- (f) Managing staff stress consisting of:
 - (i) Understanding the impact of stress on job performance, staff relations, and overall facility environment;
 - (ii) Identification of stress triggers;
 - (iii) Self-care skills;
 - (iv) De-escalating techniques; and
 - (v) Devising support systems and action plans;
- (9) End of life care, 4 hours, including:
 - (a) Advance directives;
 - (b) Hospice care;
 - (c) *Medical Orders for Life-Sustaining Treatment (MOLST)*;
 - [(c)] (d) Power of attorney;
 - [(d)] (e) Appointment of a health care agent;
 - [(e)] (f) Living will;

[(f)] (g) Pain management;

[(g)] (h) Providing comfort and dignity; and

[(h)] (j) Supporting the family;

(10) Management and operation, 4 hours, including:

(a) Role of the assisted living manager;

(b) Overview of accounting, accounts payable, and accounts receivable;

(c) The revenue cycle and budgeting;

(d) The basics of financial statements;

(e) Hiring and training of staff;

(f) Developing personnel policies and procedures;

(g) Census development; and

(h) Marketing;

(11) Emergency planning, 4 hours, including:

(a) Fire, disaster, and emergency preparedness;

(b) Occupational Safety and Health Administration (OSHA) requirements;

(c) Maintaining the building, grounds, and equipment;

(d) Elopements;

(e) Transfers to the hospital;

(f) Evacuations;

(g) Power outages;

(h) Severe weather;

(i) Fire;

(j) Emergency response systems; and

(k) Security systems;

(12) Quality assurance, 4 hours, including:

(a) Incident report processes; and

(b) Quality improvement processes; and

(13) Survey process, 2 hours, including:

(a) State statutes and regulations;

(b) What to expect during a survey; and

(c) Documentation.

B. A person seeking to offer the [assisted living] manager training course shall obtain approval [by the Department by:] *through the Maryland Higher Education Commission.*

[(1) Submitting the proposed curriculum and training materials to the Department; and

(2) Being available for an in-person or telephone interview by the Department.]

[.18 Alternate Assisted Living Manager.]

.17 Nursing Oversight.

A. Nursing oversight includes nursing assessment, case management responsibilities, and coordination and monitoring of ancillary nursing or therapy services. Nursing oversight responsibilities shall only be completed by a registered nurse.

B. Contracts.

(1) The licensee shall have a current and signed agreement with a:

(a) Primary delegating nurse/case manager for services identified in §A of this regulation; and

(b) Alternate delegating nurse/case manager to be available on call when the primary delegating nurse/case manager is not available.

(2) If either nurse is an employee of the program, the employee's job description may satisfy this requirement.

C. The licensee shall maintain documentation that the primary and alternate delegating nurse/case managers have completed the mandatory training course developed by the Board of Nursing.

D. The primary or alternate delegating nurse/case manager shall be available on call at all times.

E. Nursing assessments shall be completed using forms approved by the Department or shall include substantially equivalent content.

F. Duties. The delegating nurse/case manager shall:

(1) Have overall responsibility for case management, including the clinical oversight of resident care in the program;

(2) Perform an initial nursing assessment at the time of the resident's admission;

(3) Be on-site at least every 45 days to observe and assess each resident unless the delegating nurse/case manager determines the resident needs more frequent review;

(4) Conduct a nursing assessment within 48 hours, but not later than required by nursing practice and the resident's condition, of:

(a) A significant change in the resident's mental or physical status; or

(b) A resident's return from a:

(i) A significant hospitalization resulting in increased monitoring needs or a change in treatment or medication; or

- (ii) A stay in any skilled facility;*
- (5) Appropriately delegate nursing tasks to certified medication technicians, certified nursing assistants, and other unlicensed care providers, in compliance with the Nurse Practice Act;*
- (6) Provide instruction and direction to the manager and certified medication technician regarding medication monitoring for any medications the resident receives;*
- (7) Establish a system to assure all certified medication technicians have a current and active certified medication technician certificate; and*
- (8) With the exception of certified nursing assistants (CNAs) and geriatric nursing assistants (GNAs), document each direct care staff person's competency in providing assistance with activities of daily living prior to the staff person assuming responsibility for resident care.*
- (9) Determine and document in the resident's record if a new Resident Assessment Tool shall be completed based on the delegating nurse/case manager's evaluation of the current Resident Assessment Tool;*
- (10) Develop, implement, and evaluate resident service plans in collaboration with the manager;*
- (11) Issue nursing or clinical orders and direct changes to resident service plans, based upon the needs of residents;*
- (12) Direct the manager to provide awake overnight staff if that need is based upon the nursing assessment;*
- (13) Direct the manager to modify staffing to address resident medication management and supervision including the need, if any, for awake overnight staff;*
- (14) Appropriately assign nursing tasks to other licensed nursing staff;*

- (15) Determine through assessment if a resident is capable of self-administration or, although capable, requires a reminder or physical assistance, or requires that medications be administered;*
- (16) Reassess residents who self-administer medications, at least quarterly, for the continued ability to safely self-administer medications with or without assistance;*
- (17) Recommend changes, as appropriate, to the appropriate authorized prescriber and the manager or designee, for residents who self-administer medications;*
- (18) Collaborate with the manager in the establishment of a laboratory/diagnostic monitoring schedule as determined by each resident's authorized prescriber, and assist the manager in assuring results of the laboratory diagnostic studies are reported to the authorized prescriber in an accurate and timely manner;*
- (19) Assist the manager in the development of a medication management system for the program, which includes at a minimum, establishing a system for the facility that assures:*
- (a) Resident medications are ordered from the pharmacy in a timely manner;*
 - (b) Resident medications are received at the facility in a timely manner;*
 - (c) Resident medications are stored appropriately; and*
 - (d) There is an organized consistent system for safe, timely administration of medications to residents;*
- (20) Collaborate with the pharmacist to ensure the pharmacy recommendations as set forth in Regulation .25 of this chapter are implemented;*
- (21) Notify the resident's health care practitioner, the OHCQ, and the resident, or resident representative, when a manager fails to implement nursing or clinical orders without identifying alternatives to the care or service order;*

(22) Meet with the manager at least every 6 months to conduct a quality assurance review; and

(23) Notify the OHCQ:

(a) If the delegating nurse/case manager's contract or employment with the licensee is terminated; and

(b) Of the reason why the contract or employment was terminated.

G. In programs where nursing tasks are not delegated to unlicensed staff:

(1) The delegating nurse/case manager shall be exempt from the provisions of §F(3) and (5) - (8) of this regulation; and

(2) The delegating nurse/case manager shall be on-site at least every 90 days to observe and assess each resident unless the delegating nurse/case manager determines the resident needs more frequent review.

[.19 Other Staff—Qualifications.]

[.20 Delegating Nurse.]

[.21 Preadmission Requirements.]

.18 Resident Assessment Tool.

A. Preadmission.

(1) Within 30 days before admission, the manager or designee, in collaboration with the delegating nurse/case manager shall determine whether the resident's needs can be met by the

program and whether the resident may be admitted. This decision shall be based on completion of the Resident Assessment Tool and nursing assessment.

(2) The Resident Assessment Tool and nursing assessment shall be used to:

(a) Form the basis for development of the resident's service plan; and

(b) Determine whether the resident needs awake overnight monitoring.

(3) If the potential resident is admitted on an emergency basis by a local department of social services, the:

(a) Initial nursing assessment by the delegating nurse/case manager shall be completed within 48 hours of admission; and

(b) Resident Assessment Tool shall be completed as soon as possible but no later than 48 hours after the emergency admission.

B. Resident Assessment Tool. Information shall be based on an examination conducted by a primary physician, certified nurse practitioner, registered nurse, or physician assistant who shall certify that the information on the Resident Assessment Tool reflects the resident's current health status.

C. Reassessment.

(1) The Resident Assessment Tool shall be reviewed every 6 months and the review shall be documented by the delegating nurse/case manager and manager.

(2) A new Resident Assessment Tool shall be completed:

(a) At least annually;

(b) Within 48 hours, but not later than required by the resident's condition, after a significant change in a resident's condition; and

(c) Within 48 hours of a delegating nurse/case manager's determination that a new Resident Assessment Tool needs to be completed.

(3) If the previous Resident Assessment Tool did not indicate the need for awake overnight staff, each reassessment or review of the assessment shall include documentation as to whether awake overnight staff is required due to a change in the resident's condition.

D. Short-Term Residential Care Requirements.

(1) At the time an individual is initially admitted for short-term residential care, the following are required:

(a) A complete Resident Assessment Tool;

(b) An initial nursing assessment by the delegating nurse/case manager; and

(c) A resident agreement, in accordance with Regulations .20 and .21 of this chapter.

(2) If the individual is admitted for subsequent short-term admissions the delegating nurse/case manager shall:

(a) Complete a new initial nursing assessment; and

(b) Ensure that a new Resident Assessment Tool is completed if the delegating nurse/case manager determines there has been a significant change in condition.

E. A resident admitted as an emergency placement by a local department of social services is exempt from the Resident Assessment Tool requirements of this regulation if the resident is in temporary emergency shelter and services status, not to exceed 14 days, with notification to the Department of the placement within 48 hours.

[.22 Resident-Specific Level of Care Waiver.]

.19 Resident-Specific Waiver.

A. An assisted living program may not provide services to an individual who is:

- (1) Dangerous to the individual or others when the program would be unable to eliminate the danger through the use of appropriate treatment modalities;*
- (2) At high risk for health or safety complications which cannot be adequately managed;*
- (3) In need of a ventilator;*
- (4) Utilizing a temporary intravenous access device; or*
- (5) Being treated for a disease or condition which requires more than contact isolation.*

B. A program shall not admit, without the Department's approval of a resident-specific waiver request, an individual who at the time of initial admission, as established by the initial nursing assessment or Resident Assessment Tool, requires:

- (1) Treatment of a stage three or stage four pressure ulcer;*
- (2) A permanent intravenous access device, including external hemodialysis catheters;*
- (3) Monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or risk for, a fluctuating acute condition; or*
- (4) Monitoring of a chronic medical condition that is not controllable through readily available medications and treatments.*

C. A licensee may request a resident-specific waiver to continue providing services to a resident if an already admitted resident develops one of the care needs set forth in §B of this regulation.

D. A licensee may not continue providing services to a resident who requires care that falls into one of the categories set forth in §B of this regulation, without approval of the Department.

E. The provisions of §B of this regulation do not apply to a resident being admitted to an assisted living program when the resident is under the care of a general hospice care program

licensed by the Department which ensures delivery of one or more of the services described under §B of this regulation through the hospice program's plan of care.

F. The licensee shall submit a waiver request on the Department-approved form within 7 days of the start of the condition requiring the waiver if the condition is likely to exceed 30 days.

G. When requesting a resident-specific waiver, the licensee shall demonstrate that:

(1) The program has the capability of meeting the needs of the resident; and

(2) The needs of other residents will not be jeopardized.

H. Approval of Waiver Request.

(1) The Department may grant a resident-specific waiver, with or without conditions, if the Department determines that the:

(a) Resident's needs can be met;

(b) Needs of other residents will not be jeopardized; and

(c) Provider complies with the requirements of Regulation .41A of this chapter.

(2) Terms of a Resident-Specific Waiver.

(a) An approved resident-specific waiver applies only to the resident for whom the waiver was granted.

(b) When the Department grants a waiver to provide services to a resident whose needs fall within one of the categories in §B of this regulation, the licensee shall, at a minimum, comply with certain federal Medicare requirements for home health agencies referenced in 42 CFR §§484.18, 484.30, and 484.32.

I. Denial of Waiver Request.

(1) The Department shall deny the request for a resident-specific waiver if the Department determines that the:

- (a) Licensee is not capable of meeting the needs of the resident; or*
- (b) Needs of other residents will be jeopardized if the waiver request is granted.*
- (2) The Department may not grant resident-specific waivers for the continuation of services to a resident whose needs fall within one of the categories set forth in §A of this regulation.*
- (3) The Department's denial of a resident-specific waiver request does not prohibit the resident from being admitted to another program that is capable of meeting the resident's needs.*
- (4) If the Department initially denies a resident-specific waiver request and determines that a resident's health or safety may significantly deteriorate because of the provider's inability to provide or ensure access to care that will meet the needs of the resident, the:*
 - (a) Denial is not subject to informal dispute resolution; and*
 - (b) Department may direct the relocation of the resident to a safe environment.*

J. The Department's Decision.

- (1) The Department shall communicate the decision to grant or deny a resident-specific waiver to the manager in writing, including all appropriate supporting documentation, within 20 business days from receipt of the waiver request.*
- (2) Informal Dispute Resolution.*
 - (a) If the resident or the resident's representative disagrees with the Department's denial of a waiver request, the resident or the resident's appropriate representative may request informal dispute resolution of the Department's decision by:*
 - (i) Submitting a written request to the Department within 5 business days after receipt of the Department's denial; and*
 - (ii) Including in the written request the reasons why the Department's denial may be incorrect.*

(b) The Department shall consider the request and notify the resident or the resident's appropriate representative within 5 business days of receipt of the request whether or not the Department's decision to deny a waiver is sustained.

(c) The Department's decision from the informal dispute resolution is not:

(i) A contested case as defined in State Government Article, §10-202(d), Annotated Code of Maryland; and

(ii) Subject to further appeal.

(d) In making a decision to sustain or change the decision to deny a waiver request, the Department shall consider, among other factors, whether the granting of waivers could result in one or more residents experiencing a decline in their physical, functional, or psychosocial well-being.

(e) If the Department sustains the decision to deny the waiver request the Department shall notify the licensee of what action is required.

(f) Decision to Sustain the Denial of Waiver Request.

(i) The determination to sustain the denial of a waiver request may not be appealed.

(ii) Failure of the licensee to comply with the Department's decision is grounds for the imposition of sanctions.

K. The Department shall, during a survey or other inspection, or when a resident-specific waiver request is made, review the number of resident-specific waivers a licensee holds to ensure that the licensee continues to be able to provide appropriate care to all of its residents. The Department shall notify the licensee if, at any time, the Department determines that the licensee is not providing appropriate care to its residents because of the number of resident-specific waivers it holds.

[.23 Admission Requirements.]

[.24] .20 Resident Agreement — General Requirements and Nonfinancial Content.

A. Except as otherwise provided under §E of this regulation, for a person admitted for other than short-term residential care, the resident or the resident's agent and the assisted living manager shall sign, before or at the time of admission, a resident agreement that:

- (1) Is a clear and complete reflection of commitments agreed to by the parties, and the actual practices that will occur in the assisted living program;
- (2) Is accurate, precise, easily understood, legible, readable, and written in plain English;
- (3) Conforms to all relevant State and local laws and requirements; and
- (4) Recommends review of the agreement by an attorney or other representative chosen by the resident.

B. For a person admitted for short-term residential care, the [assisted living] program shall sign a resident agreement with the resident or resident's [agent] *representative* as set forth in this regulation excluding the provisions of [§D(7)(c) and (8)(c) and (d)] *§D(5)(c) and (6)(c), (d) and (e)* of this regulation.

C. The [assisted living program] *licensee* shall:

- (1) Give a copy of the signed resident agreement to the resident and the resident's [agent] *representative*;
- (2) Maintain a copy of the resident agreement on-site; and
- (3) Make the resident agreement available for review by the Department or its designee.

D. The resident agreement shall include provisions, which include at a minimum:

- [(1) A statement of the level of care for which the assisted living program is licensed;
- (2) The level of care needed by the resident, as determined by the initial assessment required by Regulation .21 of this chapter;
- (3) Unless the assisted living program is part of a continuing care retirement community and the agreement is signed by a continuing care subscriber as defined in COMAR 32.02.01.01B(35), a statement indicating that if a resident's level of care, after admission, exceeds the level of care for which the licensee is permitted to provide and a waiver for the continued stay of the resident has not been granted, the assisted living program shall discharge the resident from the program;
- (4) If the assisted living program is part of a continuing care retirement community and a separate, concurrent resident agreement is signed by a continuing care subscriber as defined at COMAR 32.02.01.01B(35), a statement indicating that if the resident's level of care, after admission to assisted living, exceeds the level of care for which the licensee is permitted to provide and a waiver for the continued stay of the resident has not been granted:
 - (a) The licensee may not provide any services to the resident beyond that which it is licensed to provide;
 - (b) If the licensee offers either comprehensive care services, or priority access to comprehensive care services, and a comprehensive care bed is available for occupancy, the resident shall be given the option to transfer to comprehensive care; and
 - (c) The resident may be discharged from the continuing care retirement community only for just cause as set forth in COMAR 32.02.02.31;
- (5) A listing of services provided by the assisted living program and a listing of those services the assisted living program does not provide;
- (6) An explanation of the assisted living program's complaint or grievance procedure;]

(1) A listing of services provided by the program and a listing of those services the program does not provide;

(2) A policy on resident self-administration of medications;

(3) A policy on the administration of medications by a spouse or domestic partner to their spouse or domestic partner, when both parties reside in the same assisted living program;

(4) An explanation of the program's complaint or grievance procedure;

[(7)] (5) Occupancy provisions including:

(a) Policies regarding bed and room assignment, including the specific room and bed assigned to the resident at the time of admission;

(b) Procedures to be followed when the [assisted living] program temporarily or permanently changes the resident's accommodation by:

(i) Relocating the resident within the facility;

(ii) Making a change in roommate assignment; or

(iii) Increasing or decreasing the number of individuals occupying a room;

(c) Procedures to be followed in transferring the resident to another facility;

(d) The availability of locks for storage;

(e) The availability of locks, if any, for the resident's room;

(f) Security procedures which the licensee shall implement to protect the resident and the resident's property;

(g) The staff's right, if any, to enter a resident's room;

(h) The resident's rights and obligations concerning use of the facility, including common areas;

(i) The [assisted living] program's bed hold policy in case of unavoidable or optional absences such as hospitalizations, recuperative stays in other settings, or vacation, including [the

conditions under which the program will hold a bed, relevant time frames, and payment terms, and the circumstances under which the program will no longer hold the bed];

(i) The conditions under which the program will hold a bed;

(ii) Relevant bed hold time frames of not less than 72 hours;

(iii) The circumstances under which the program will no longer hold the bed after the minimum 72-hour bed hold; and

(iv) Payment terms;

(j) Provisions for continuous service in the event of an emergency; and

(k) An acknowledgment that the resident or the resident's representative has reviewed all [assisted living program] rules, requirements, restrictions, or special conditions that the program will impose on the resident;

[(8)] (6) Admission and discharge policies and procedures including:

(a) Any additional admission requirement imposed by the [assisted living] program;

(b) Those actions, circumstances, or conditions which may result in the resident's discharge from the [assisted living] program;

(c) The procedures which the assisted living program shall follow if it intends to discharge a resident without the resident's agreement, and thereby terminate the resident agreement, including a provision under which the assisted living program shall give not less than 30 days notice to the resident or resident's representative before the effective date of the discharge and termination of the resident agreement, except in the case of a health emergency or substantial risk to the health and safety of the other residents or staff in the program;

(d) The procedures which the program shall follow if it intends to emergently discharge a hospitalized resident whose medical needs cannot be met by the facility without 30 days notice,

including a provision under which the delegating nurse/case manager shall perform and document a nursing assessment of the resident's condition at the hospital to determine if the resident can safely return to the facility, as a transfer to the hospital is not, in and of itself, grounds for discharge;

[(d)] (e) The procedures which the resident shall follow if the resident wishes to terminate the resident agreement, including a provision that the resident, or appropriate representative, shall give not less than 30 days notice to the [assisted living] program before the effective date of the termination, except in the case of a health emergency; and

[(e)] (f) In a unit in which more than one resident is the contracting party, the terms under which the agreement may be modified in the event of one of the resident's discharge or death, including provisions for termination of the agreement and appropriate refunds;

[(9)] (7) Obligations of the licensee, the resident, or the resident's representative as to:

(a) Arranging for or overseeing medical care; and

(b) The monitoring of the health status of the resident; and

(8) *Adult medical day care policies and availability;*

(9) *Any arrangements the resident has made, or wishes to make, with regard to burial, including but not limited to:*

(a) *Financial;*

(b) *Religious;*

(b) *Name of preferred funeral director, if any; and*

(d) *The name, address, and relationship of any person who has agreed to claim the body of the resident or who has agreed to assume funeral or burial responsibility;*

[(10) A policy on the administration of medications by a spouse or domestic partner to their spouse or domestic partner, when both parties reside in the same assisted living program.]

(10) Unless the program is part of a continuing care retirement community and the agreement is signed by a continuing care subscriber as defined in COMAR 32.02.01.01B(35), a statement indicating that if a resident's care needs, after admission, exceed what the licensee is permitted to provide as set forth in Regulation .19 of this chapter, and a waiver for the continued stay of the resident has not been granted, the program shall discharge the resident; and

(11) If the program is part of a continuing care retirement community and a separate, concurrent resident agreement is signed by a continuing care subscriber as defined in COMAR 32.02.01.01B(35), a statement indicating that if the resident's care needs, after admission to assisted living, exceed what the licensee is permitted to provide as set forth in Regulation .19 of this chapter, and a waiver for the continued stay of the resident has not been granted:

(a) The licensee may not provide any services to the resident beyond that which it is licensed to provide;

(b) If the licensee offers either comprehensive care services, or priority access to comprehensive care services, and a comprehensive care bed is available for occupancy, the resident shall be given the option to transfer to comprehensive care; and

(c) The resident may be discharged from the continuing care retirement community only for just cause as set forth in COMAR 32.02.01.31.

E. [If the services provided in an assisted living program that is part of a continuing care retirement community are covered under a continuing care agreement that complies with Article 70B, §13(d), and Health-General Article, §19-1806, Annotated Code of Maryland:

(1) The Department may not require a separate resident agreement for the assisted living program; and

(2) The requirements set forth in this regulation and Regulation .25 of this chapter do not apply.]

If the services provided in a program that is part of a continuing care retirement community are covered under a continuing care agreement that complies with Human Services Article, Title 10, Subtitle 4, and Health-General Article, §19-1806, Annotated Code of Maryland:

(1) The Department may not require a separate resident agreement for the assisted living program; and

(2) The requirements set forth in this regulation and Regulation .21 of this chapter do not apply.

F. [The licensee may not include a provision in the agreement which is inconsistent with any of the requirements of this chapter.] *The licensee may not include a provision in the agreement which is inconsistent with any of the requirements of this chapter.*

[.25] .21 Resident Agreement — Financial Content.

A. If a program requires payment of funds before admission, the funds shall be fully refundable unless the program discloses, in writing, what portion is not refundable.

[A.] *B. The resident agreement shall include financial provisions, which include at a minimum:*

(1) Obligations of the licensee and the resident, or the resident's [agent,] *representative*, as to:

(a) Handling the finances of the resident;

(b) The purchase or rental of essential or desired equipment and supplies;

(c) Arranging and contracting for services not covered by the resident agreement;

(d) Ascertaining the cost of and purchasing durable medical equipment; and

(e) Disposition of resident property upon discharge or death of the resident; and

- (2) Rate structure and payment provisions covering:
- (a) All rates to be charged to the resident, including but not limited to:
 - (i) Service packages;
 - (ii) Fee for service rates; and
 - (iii) Any other non-service-related charges;
 - (b) Notification of [the rate structure applicable for other levels of care provided by the assisted living program]the criteria to be used for imposing additional charges for the provision of additional services, if the resident's service and care needs change;
 - (c) Payment arrangements and fees, if known, for third-party services not covered by the resident agreement, but arranged for by either the resident, resident's agent, or the [assisted living] program;
 - (d) Identification of the persons responsible for payment of all fees and charges and a clear indication of whether the person's responsibility is or is not limited to the extent of the resident's funds;
 - (e) A provision which provides at least 45 days notice of any rate increase, except if necessitated by a change in the resident's medical condition;
 - (f) Fair and reasonable billing, payment, and credit policies;
 - (g) The procedures the [assisted living] program will follow in the event the resident or [agent] *resident's representative* can no longer pay for services provided for in the resident agreement or for services or care needed by the resident, *including at least 30 days notice prior to discharge to the Department of Aging and Adult Protective Services*; and
 - (h) Terms governing the refund of any prepaid fees or charges, in the event of a resident's discharge from the assisted living program or termination of the resident agreement.

C. For all resident agreements, death of the resident shall constitute a cancellation of the resident agreement and all obligations thereunder, unless the resident agreement includes specific provisions to the contrary.

[B.] *D. When the resident's needs significantly change and the level of service provided needs to be increased or decreased, the resident agreement shall be amended by the parties to reflect the changes in services being provided and any applicable increase or decrease in charges.*

[.26] .22 Service Plan.

A. The [assisted living] manager, or designee, shall ensure that all services are provided in a manner that respects and enhances the dignity, privacy, and independence of each resident. A service plan for each resident shall be developed in a manner that enhances the principles of dignity, privacy, resident choice, resident capabilities, individuality, and independence without compromising the health or reasonable safety of other residents.

[B. Assessment of Condition.]

[(1)] *B. The resident's service plan shall be based on a full [assessments] assessment of the resident's health, function, and psychosocial status using the Resident Assessment Tool[.] and nursing assessment.*

[(2)] A full assessment of the resident shall be completed:

(a) Within 48 hours but not later than required by nursing practice and the patient's condition after:

(i) A significant change of condition; and

(ii) Each nonroutine hospitalization; and

(b) At least annually.

(3) When the delegating nurse determines in the nurse's clinical judgment that the resident does not require a full assessment within 48 hours, the delegating nurse shall:

(a) Document the determination and the reasons for the determination in the resident's record;

and

(b) Ensure that a full assessment of the resident is conducted within 7 calendar days.

(4) A review of the assessment shall be conducted every 6 months for residents who do not have a change in condition. Further evaluation by a health care practitioner is required and changes shall be made to the resident's service plan, if there is a score change in any of the following areas:

(a) Cognitive and behavioral status;

(b) Ability to self-administer medications; and

(c) Behaviors and communication.

(5) If the resident's previous assessment did not indicate the need for awake overnight staff, each full assessment or review of the full assessment shall include documentation as to whether awake overnight staff is required due to a change in the resident's condition.

C. The assisted living manager, or designee, shall ensure that:

(1) A written service plan or other documentation sufficiently recorded in the resident's record is developed by staff, which at a minimum addresses:

(a) The services to be provided to the resident, which are based on the assessment of the resident;

(b) When and how often the services are to be provided; and

(c) How and by whom the services are to be provided;

(2) The service plan is developed within 30 days of admission to the assisted living program; and

(3) The service plan is reviewed by staff at least every 6 months, and updated, if needed, unless a resident's condition or preferences significantly change, in which case the assisted living manager or designee shall review and update the service plan sooner to respond to these changes.]

C. The service plan shall be completed utilizing a form approved by the Department or shall contain substantially equivalent content.

D. The manager, or designee, in collaboration with the delegating nurse/case manager, shall ensure that:

(1) A written service plan is developed by staff, which at a minimum addresses:

(a) The services to be provided to the resident, based on the resident's nursing assessment and Resident Assessment Tool;

(b) When and how often the services are to be provided; and

(c) How and by whom the services are to be provided;

(2) The service plan is developed within 14 days of admission to the program; and

(3) The service plan is reviewed by staff, and updated if needed, at least every 6 months, unless a resident's condition or preferences significantly change, in which case the manager, or designee, and delegating nurse/case manager shall review and update the service plan sooner.

[.27] .23 Resident Record[or Log].

A. The [assisted living] manager shall ensure that an individual record [or log] is maintained at the facility for each resident in a manner that ensures security and confidentiality, and which includes at a minimum:

[(1) The documentation required by Regulations .21 and .26 of this chapter;

- (2) Medical orders;
- (3) Rehabilitation plans, if appropriate;
- (4) The service plan;
- (5) Care notes as indicated in §D of this regulation; and
- (6) The emergency data sheet as described in Regulation .33D of this chapter.]

(1) Resident Assessment Tools;

(2) Nursing assessments;

(3) Signed medical orders;

(4) Service plans;

(5) Care notes;

(6) Emergency data sheets;

(7) Medical Orders for Life-Sustaining Treatment forms;

(8) Pharmacy reviews, if appropriate; and

(9) Rehabilitation plans, if appropriate.

B. [Readmission of a Resident.

(1) A resident shall be reassessed by the delegating nurse within 48 hours of readmission to the program if the following occurs:

(a) Hospitalizations or a 15 day or greater stay in any skilled facility; or

(b) There is a significant change in the resident's mental or physical status upon return to the program after an absence from the program.

(2) When the delegating nurse determines in the nurse's clinical judgment that the resident does not require a full assessment within 48 hours, the delegating nurse shall:

(a) Document the determination and the reasons for the determination in the resident's record;
and

(b) Ensure that a full assessment of the resident is conducted within 7 calendar days.] *The manager shall develop written policies and procedures to ensure that all information relating to a resident's condition or preferences, including any significant change as defined in Regulation .02B of this chapter, is documented in the resident's record and communicated in a timely manner to:*

(1) *The resident;*

(2) *The resident's health care representative, if appropriate; and*

(3) *All appropriate health care professionals and staff who are involved in providing care to the resident.*

C. [The assisted living manager shall develop policies and procedures to ensure that all information relating to a resident's condition or preferences, including any significant change as defined in Regulation .02B of this chapter, is documented in the resident's record and communicated in a timely manner to:

(1) The resident;

(2) The resident's health care representative, if appropriate; and

(3) All appropriate health care professionals and staff who are involved in the development and implementation of the resident's service plan.] *Resident Care Notes.*

(1) *Appropriate staff shall write care notes for each resident on admission and at least weekly, or more frequently if any of the following occur:*

(a) *With any significant changes in the resident's condition, including when incidents occur and any follow-up action is taken;*

- (b) When the resident is transferred from the facility to another skilled facility;*
 - (c) On return from medical appointments and when seen in home by any health care provider;*
 - (d) On return from non-routine leaves of absence; and*
 - (e) When the resident is discharged permanently from the facility, including the location and manner of discharge.*
- (2) Staff shall write care notes that are individualized, legible, timed and dated chronologically, and signed by the writer.*

D. [Resident Care Notes.

- (1) Appropriate staff shall write care notes for each resident:**
- (a) On admission and at least weekly;**
 - (b) With any significant changes in the resident's condition, including when incidents occur and any follow-up action is taken;**
 - (c) When the resident is transferred from the facility to another skilled facility;**
 - (d) On return from medical appointments and when seen in home by any health care provider;**
 - (e) On return from nonroutine leaves of absence; and**
 - (f) When the resident is discharged permanently from the facility, including the location and manner of discharge.**
- (2) Staff shall write care notes that are individualized, legible, chronological, and signed by the writer.]**

D. The licensee shall maintain a resident's record for 5 years after the resident is discharged.

E. If a program ceases operation, the licensee shall make arrangements to retain records as required by §D of this regulation.

F. A licensee shall:

- (1) Maintain the privacy and confidentiality of a resident's medical records;*
- (2) Release medical records or medical information about a resident only with the consent of the resident or resident's representative, or as permitted by Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland; and*
- (3) Maintain and dispose of a resident's medical records in accordance with Health-General Article, Title 4, Subtitle 4, Annotated Code of Maryland.*

[.28] .24 Services.

A. Meals.

(1) The [assisted living] manager shall ensure that:

(a) A resident is provided three meals in a common dining area and additional snacks during each 24-hour period, 7 days a week;

(b) Meals and snacks are well-balanced, varied, palatable, properly prepared, and of sufficient quality and quantity to meet the daily nutritional needs of each resident with specific attention given to the preferences and needs of each resident;

(c) All food is prepared in accordance with all State and local sanitation and safe food handling requirements;

(d) Food preparation areas are maintained in accordance with all State and local sanitation and safe food handling requirements; and

(e) Residents have access to snacks or food supplements during the evening hours.

[(2) Menus.

(a) Menus shall be written at least 1 week in advance with portion sizes tailored to each resident.

(b) Menus shall be maintained on file, as served, for 2 months.

(c) As part of the licensure approval and renewal process, an applicant shall submit a 4-week menu cycle with documentation by a licensed dietician or nutritionist that the menus are nutritionally adequate.]

(2) *The program shall post a weekly menu in a conspicuous place that is visible to residents and other interested parties.*

(3) *Menus as served, including portion size, shall be maintained on file for 1 month.*

[(3)] (4) Special Diets.

(a) [The assisted living] Program staff shall:

(i) Prepare or arrange for the provision of special diets as ordered by the resident's [personal physician] *health care practitioner* or as needed by the resident's condition; and

(ii) Document special diets in the resident's record.

(b) If the diet is beyond the capability of the program, the resident or the resident's [physician] *health care practitioner* shall make other arrangements for the resident's care, or the program shall discharge the resident.

B. Monitoring. The [assisted living] manager shall ensure that each resident is monitored on a daily basis to ensure that:

(1) The resident's service plan is being properly implemented; and

(2) All adaptive equipment, ambulation devices, and other necessary independent living aids are in proper working order.

C. Nursing Services. The [assisted living] manager, in consultation with the delegating nurse/*case manager*, shall ensure that all nursing services are provided consistent with the Nurse Practice Act, Health Occupations Article, Title [10] 8, Annotated Code of Maryland.

D. Personal Care Services. The [assisted living] manager shall provide or ensure the provision of all necessary personal care services, including, but not limited to, the range of assistance needed by a resident to complete the following activities of daily living[:], *as defined in Regulation .02B of this chapter.*

- (1) Eating or being fed;
- (2) Personal hygiene, grooming, bathing, and oral hygiene, including brushing teeth, shaving, and combing hair;
- (3) Mobility, transfer, ambulation, and access to the outdoors, when appropriate;
- (4) Toileting and incontinence care; and
- (5) Dressing in clean, weather-appropriate clothing.]

E. Housekeeping Services. The [assisted living] manager shall ensure that:

- (1) Housekeeping services are provided; and
- (2) All areas of the facility are maintained in a clean and orderly condition.

F. Health Care and Social Services. The assisted living manager is responsible for facilitating access to any appropriate health care and social services for the resident as determined in the resident's assessment, including but not limited to:

- (1) Social work services;
- (2) Rehabilitative services, including occupational, physical, speech, and audiology therapies;
- (3) Home health services;
- (4) Hospice services;
- (5) Skilled nursing services;
- (6) Physician services;
- (7) Oral health care;

- (8) Dietary consultation and services;
- (9) Counseling;
- (10) Psychiatric services; and
- (11) Other specialty health and social work services such as services for residents with cognitive impairment.

G. Social and Spiritual Activities.

(1) The [assisted living] manager shall provide or arrange appropriate opportunities for socialization, social interaction, and leisure activities which promote the physical and mental well-being of each resident, including facilitating access to spiritual and religious activities consistent with the preferences and background of the resident.

(2) To encourage resident participation in social and recreational activities, the assisted living manager shall:

- (a) Provide or arrange for transportation to these activities in accordance with the resident's service plan; and
- (b) Assist a resident with communication, interpersonal, and social skills, including managing difficult behaviors in accordance with the resident's service plan.

H. Special Care Needs – Monitoring and Oversight

(1) Every resident shall receive appropriate care, services, and oversight in accordance with State and federal guidelines, and accepted standards of nursing and medical practice, and in compliance with the resident-specific waiver provisions of Regulation .19 of this chapter.

Resident service plans shall reflect increased monitoring and oversight needed by residents with special care needs, which include at a minimum:

- (a) Frequent falls;*

(b) Decubitus ulcer care;

(c) Oxygen therapy;

(d) Enteral feedings;

(e) Foley care;

(f) Ostomy care;

(g) Therapeutic drug levels;

(h) Mental illness or psychiatric care; and

(i) Diabetic management.

(2) At a minimum, appropriate care includes:

(a) Using proper infection control techniques to prevent infection and cross contamination;

(b) Providing care and services to promote healing;

(c) Ensuring that staff have demonstrated competency to the delegating nurse/case manager in the provision of care that meets the special care needs of the resident; and

(d) Notifying when incidents occur and there is a need for medical or nursing evaluation and treatment, the:

(i) Resident, or if appropriate, the resident's representative;

(ii) Program's delegating nurse/case manager; and

(iii) Resident's health care practitioner, if appropriate.

[.29] .25 Medication Management and Administration.

A. All staff who administer medications to residents shall have completed the medication administration course that is taught by a registered nurse who is approved by the Maryland Board of Nursing.

B. The [assisted living] manager shall document completion of the medication technician training *and certification as a medication technician by the Maryland board of Nursing per COMAR 10.39.04* in the personnel file or other readily available record of each unlicensed staff member who administers medications.

C. All medications shall be administered consistent with applicable requirements of COMAR 10.27.11.

D. [An assisted living manager shall ensure that the resident's initial assessment process identifies whether a resident:] *Self-Administration.*

(1) A manager shall ensure that the resident's initial assessment by the delegating nurse/case manager identifies whether a resident:

[1] (a) Is capable of self-administration of medication;

[2] (b) Is capable of self-administration of medication, but requires a reminder to take medications or physical assistance with opening and removing medications from the container, or both; or

[3] (c) Requires that medications be administered by the assisted living program staff or by a spouse or domestic partner of the resident in accordance with §F of this regulation.

[E.] (2) For a resident who is capable of self-administration or, although capable, requires a reminder or physical assistance, as stated in [§D(2)] §D(1)(b) of this regulation, the [assisted living] manager shall ensure that the resident is reassessed by the delegating nurse quarterly for the ability to safely self-administer medications with or without assistance.

[F.] *E. Spousal Administration.* While residing in the same assisted living facility as their spouse or domestic partner, a resident may administer medications to their spouse or domestic partner providing the following documentation is maintained in the resident's record:

- (1) An initial assessment by their health care provider documenting the resident's competency and ability to safely administer medications to their spouse or domestic partner;
- (2) Quarterly assessments by the delegating nurse/*case manager* documenting the resident's continued ability to safely administer medications to their spouse or domestic partner; and
- (3) Current signed medical orders.

[G.] *F. Medication Review Upon Admission.*

(1) [The assisted living manager shall consult within 14 days of a resident's admission with the individuals set forth in §G(2) of this regulation to review a new resident's medication regime.]

The manager shall ensure that within 14 days of a new resident's admission, a medication regimen review is conducted by a:

[(2) The medication review may be conducted by a:]

(a) Primary care physician;

(b) Certified registered nurse practitioner;

[(c) Certified registered nurse midwife;]

[(d)] (c) Registered nurse, who may be the delegating nurse/*case manager*; or

[(e)] (d) Licensed pharmacist.

[H.] (2) The purpose of the *medication regimen* review [required by §G of this regulation] is to review with the [assisted living] manager or designee:

[(1)] (a) A resident's current medication profile, including all prescription and nonprescription medications and tube feedings;

[(2)] (b) The potential that current medications have to act as chemical restraints;

[(3)] (c) The potential for any adverse drug interactions, including potential side effects from the medications; and

[(4)] (d) Any medication errors that have occurred since admission.

[I.] (3) The [assisted living] manager, or designee, shall ensure that the *regimen* review [required by §G of this regulation is documented in the resident's records], including any recommendations given by the reviewer [.] *is documented in the resident's records.*

[J.] G. Pharmacy Review.

(1) The [assisted living] manager [of a program] shall arrange for a licensed pharmacist to conduct an on-site review of [physician] *health care practitioner* prescriptions, [physician orders], and resident records at least every 6 months for any resident receiving nine or more medications, including over the counter and PRN (as needed) medications.

(2) The pharmacist's review shall include, but is not limited to, whether:

(a) The program is in compliance with Board of Pharmacy's requirements for packaging of medications;

(b) Each resident's medications are properly stored and maintained;

(c) Each resident receives the medications that have been specifically prescribed for that resident in the manner that has been ordered;

(d) Based on available information, the desired effectiveness of each medication is achieved, and, if not, that the appropriate authorized prescriber is so informed;

(e) Any undesired side effects, potential and actual adverse drug reactions, and medication errors are identified and reported to the appropriate authorized prescriber;

(f) The resident has a medical condition as documented in the resident's records that is not currently being treated by medication;

(g) There is drug use without current indication in the resident's records of a medical condition that warrants the use of the drug;

- (h) There is drug overuse that is causing side effects as documented in the resident records;
 - (i) Current medication selections result in inappropriate drug dosage;
 - (j) The resident may be experiencing drug interactions;
 - (k) The resident is receiving medication, either prescribed or over-the-counter medications, as well as herbal remedies that could result in drug-drug, drug-food, or drug-laboratory test interactions;
 - (l) Administration times of medication need to be modified to address drug interactions or meal times, or both;
 - (m) [The resident records need to be reviewed to assure that] Periodic diagnostic monitoring required by certain medications have been performed; and
 - (n) [The resident's medication regimens need to be reviewed to determine if] more cost-effective medications are available to treat current medical conditions.
- (3) The pharmacist shall document the pharmacy review as required under this section in each resident's chart and this documentation shall be reviewed every 6 months as part of the assisted living program's quality assurance activities as required in Regulation .12 of this chapter.
- [K.] (H) The person conducting the on-site review under [§G or J] §F or G of this regulation shall recommend changes, as appropriate, to the appropriate authorized prescriber and the [assisted living] manager or designee.
- [L. If a resident requires that staff administer medications as defined in Regulation .02B(3) of this chapter, and the administration of medications has been delegated to an unlicensed staff person pursuant to COMAR 10.27.11, the assisted living manager shall comply with COMAR 10.27.11 by arranging for an on-site review by the delegating registered nurse at least every 45

days. The delegating nurse shall make appropriate recommendations to the appropriate authorized prescriber, and the assisted living manager or designee.]

[M.] (I) Safe Storage of Medication. The [assisted living] manager, or designee, shall ensure that:

(1) Medications are stored in the original dispensed container;

(2) Medications are stored in a secure location, at the proper temperature; and

(3) [The following documentation is maintained for all residents:] *Medications are labeled with the following:*

- (a) Name of the resident;
- (b) Name of the medication;
- (c) Reason for the medication;
- (d) Dose;
- (e) Physician's or authorized prescriber's name;
- (f) Date of issuance;
- (g) Expiration date;
- (h) Refill limits; [and]
- (i) Directions for use [.];
- (j). *Frequency; and*
- (k) *Route.*

J. A program may not have interim medications.

K. Medical orders shall be updated at least annually with the Resident Assessment Tool, or sooner as needed

[N.] (L.) Medications and treatments shall be administered consistent with current signed medical orders and using professional standards of practice.

M. Staff shall chart on the medication administration record each time staff administer, or assist in the administration of, a medication.

N. Only sealed, unopened medication packages or individual unit dose blisters may be returned to the inventory of the pharmacy.

O. [Required Documentation.] *Controlled Dangerous Substances.*

(1) A staff member shall *count and* record the documentation required under §M of this regulation for all residents for whom medications are administered, or who receive assistance in taking their medications, as defined by Regulation .02B(3)(b) of this chapter, at the time that the resident takes or receives medications.

(2) A staff member shall record the documentation required under §M of this regulation for residents who self-administer:

(a) Upon admission; or

(b) When changes in the resident's medication regimen are ordered by a physician or other authorized health care practitioner.

P. Accounting for Narcotic and Controlled Drugs.

(1) Staff shall count and record [controlled drugs, such as narcotics,] *Schedule II through V controlled substances* before the close of every shift.

(2) The daily record shall account for all controlled drugs documented as administered on the medication administration record.

(3) All Schedule II and III narcotics shall be maintained under a double lock system.

(4) *The manager shall obtain a Controlled Dangerous Substances registration certificate from the Maryland Division of Drug Control.*

(5) The manager shall develop written policies and procedures to guard against theft and diversion of controlled substances, including:

(a) Proper storage;

(b) Accountability;

(c) Access;

(d) Destruction; and

(e) Reporting procedures.

(6) Controlled substances may not be returned to the pharmacy.

(7) Controlled substances in need of disposal shall be destroyed on-site at the program and their destruction shall be:

(a) Conducted by two members of the staff, one of whom must be a licensed practitioner, pharmacist, or a nurse; and

(b) Recorded on a form supplied by the Division of Drug Control, a copy of which shall be forwarded to the Division within 10 days of destruction.

[.30] .26 Alzheimer's/Dementia Special Care Unit.

A. All Alzheimer's/dementia special care units shall have a coordinator who is solely responsible for the coordination of the Alzheimer's/dementia special care unit. The coordinator shall:

(1) Be a licensed or degreed healthcare professional, other than the delegating nurse; and

(2) Have completed a course, consisting of a minimum of 30 hours of training, by a nationally recognized Alzheimer's/dementia care-giving resource or association; or

(3) Have substantially equivalent training and experience.

B. The coordinator shall, in collaboration with the manager and delegating nurse/case manager, coordinate as needed outside psychiatric and psychosocial services to assist with behavior modification plans.

C. Other Staff.

(1) In addition to the trainings described in Regulation .14 of this chapter, staff shall:

(a) Complete a minimum of 20 hours of documented initial training on the care of residents with Alzheimer's disease and related dementia prior to providing direct resident care; and

(b) Complete a minimum of 8 hours of documented annual training on Alzheimer's disease and related dementia;

(2) Direct care staff shall not have housekeeping, laundry, food preparation, or maintenance duties as primary responsibilities; and

(3) Certified medication technicians shall not be responsible for any direct care activities while administering medications during the assigned times.

[A.] *D. Written Description.* At the time of initial licensure, [an assisted living] a program with an Alzheimer's special care unit shall submit to the Department a written description of the special care unit using a disclosure form adopted by the Department. The description shall explain how:

(1) The form of care and treatment provided by the Alzheimer's unit is specifically designed for the specialized care of individuals diagnosed with Alzheimer's disease or a related dementia; and

(2) The care in the special care unit differs from the care and treatment provided in the non special care unit.

[B.] *E.* At the time of license renewal, [an assisted living] a program with an Alzheimer's special care unit shall submit to the Department a written description of any changes that have been

made to the special care unit and how those changes differ from the description of the unit that is on file with the Department.

[C.] *F.* [An assisted living] A program with an Alzheimer's special care unit shall disclose the written description of the special care unit to:

- (1) Any person on request; and
- (2) The family or resident's representative before admission of the resident to the Alzheimer's special care unit or program.

[D.] *G.* The description of the Alzheimer's special care unit shall include:

- (1) A statement of philosophy or mission;
- (2) How the services of the special care unit are different from services provided in the rest of the assisted living program;
- (3) Staff training and staff job titles, including the number of hours of dementia-specific training provided annually for all staff by job classification and a summary of training content;
- (4) Admission procedures, including screening criteria;
- (5) Assessment and service planning protocol, including criteria to be used that would trigger a reassessment of the resident's status before the customary 6-month review;
- (6) Staffing patterns, including the ratio of direct care staff to resident for a 24-hour cycle, and a description of how the staffing pattern differs from that of the rest of the program;
- (7) A description of the physical environment and any unique design features appropriate to support the functioning of cognitively impaired individuals;
- (8) A description of activities, including frequency and type, how the activities meet the needs of residents with dementia, and how the activities differ from activities for residents in other parts of the program;

- (9) The program's fee or fee structure for services provided by the Alzheimer's special care unit or program as part of the disclosure form that is required in Regulation [10] .09 of this chapter;
- (10) Discharge criteria and procedures;
- (11) Any services, training, or other procedures that are over and above those that are provided in the existing assisted living program; and
- (12) Any other information that the Department may require.

[E.] *H.* The Department shall restrict admission or close the operation of a special care unit if the Department determines that the facility has not demonstrated compliance with this regulation or the health or safety of residents is at risk.

.27 Alzheimer's/Dementia Special Care

A. The manager of a facility which provides care to one or more individuals with dementia, including a probable or confirmed diagnosis of Alzheimer's disease or a related disorder, shall ensure the requirements of this regulation are met.

B. An orientation manual with policies and procedures specific to Alzheimer's/dementia special care shall be maintained on-site and accessible to all staff.

C. The manager, or designee, shall ensure that an enhanced service plan is developed for all residents with Alzheimer's/dementia. The service plan shall, at a minimum, include specific interventions that address:

- (1) Persistent or repetitive behaviors that affect the health and well-being of the resident or present a danger to the resident or other individuals;*
- (2) Environment, safety, and security;*
- (3) Behavior management;*

(4) Staffing; and

(5) Life enrichment activities.

D. Delegating nurse/case manager.

(1) For residents receiving psychotropic or behavior-modifying medications, the delegating nurse/case manager during nursing assessments shall:

(a) Assess the resident's functional level;

(b) Identify any potential adverse effects of the medication or medications; and

(c) Consult with the authorized prescriber or pharmacist, as necessary, to determine if medication dosages should be modified or discontinued.

(2) During nursing assessments the delegating nurse/case manager shall evaluate residents with persistent or repetitive behaviors that affect the health and well-being of the resident or present a danger to the resident or other individuals to determine:

(a) A baseline of the intensity, duration, and frequency of the behavior;

(b) Antecedent behaviors and activities;

(c) Recent changes or risk factors in the resident's life;

(d) Environmental factors such as time of day, staff involved, and noise levels;

(e) The resident's medical status;

(f) Alternative, structured activities or behaviors that have been successful or unsuccessful in the past; and

(g) The effectiveness of behavioral management approaches.

(3) The results of the enhanced assessments described in §D(1) and (2) of this regulation shall be reflected in the resident's service plan.

E. The manager and delegating nurse/case manager shall coordinate outside psychiatric and psychosocial services, if appropriate, to assist with behavior modification plans.

F. When the resident census includes eight or more residents with Alzheimer's/dementia, there shall be a minimum of one direct care staff on each shift for every eight residents.

[.31] .28 Incident Reports.

A. Program Staff [of the assisted living program] shall complete an incident report within 24 hours of having knowledge that an incident, as defined in Regulation .02B(35) of this chapter, occurred.

B. The [assisted living program] *licensee* shall make incident reports available on the premises to the Department and any government agency designated by the Department.

C. All incident reports shall include:

(1) Time, date, place, and individuals present;

(2) Complete description of the incident;

(3) Response of the staff at the time; and

(4) Notification[, including notification] to the:

(a) Resident, or if appropriate the resident's representative;

(b) Resident's [physician] *health care practitioner*, if appropriate;

(c) Program's delegating nurse/*case manager*;

(d) Licensing or law enforcement authorities, when appropriate; and

[(e)] (5) Follow-up activities, including investigation of the occurrence and steps to prevent its reoccurrence.

D. The licensee shall notify the Department within 24 hours of a resident death resulting from:

- (1) Abuse;*
- (2) Wandering;*
- (3) A medication error;*
- (4) Burns; or*
- (5) Any injury incurred at the program.*

[.32 Records.]

[.33] .29 Relocation and Discharge.

A. Relocation within the Facility.

(1) The [assisted living program] *licensee* may not relocate a resident within the facility except in accordance with the terms and conditions of the resident agreement.

(2) [An assisted living program] *A licensee* shall notify a resident and the resident's representative at least 5 days before a nonemergency relocation within the facility and obtain the consent of the resident or resident's representative.

(3) A licensee shall document in the resident's record how the requirements of this regulation have been met.

B. Discharge.

(1) Discharge of a resident or transfer to another facility or address without the consent of the resident or the resident's representative shall be in accordance with the resident agreement.

(2) An assisted living program shall notify a resident or the resident's representative within 30 days before a non-emergency discharge.

(3) In the event of an emergency, the program shall notify the resident or the resident's representative as quickly as possible and document the reason for the emergency and abbreviated notice.

C. When the resident is discharged to another facility, the assisted living program shall provide to the receiving facility any information related to the resident that is necessary to ensure continuity of care and services, including at a minimum, the:

(1) Current [physician's orders;] *medication and treatment orders*;

(2) Medication administration records; and

(3) Most current [resident assessment.] *Resident Assessment Tool*.

D. In the event of a health emergency requiring the transfer to an acute care facility, a copy of an emergency data sheet shall accompany the resident to an acute care facility. This data sheet shall include at least:

(1) The resident's full name, date of birth, Social Security number, if known, and insurance information;

(2) The name, telephone number, and address of the resident's representative;

(3) *The name and telephone number of the resident's health care practitioner;*

[(3)] (4) The resident's current documented diagnoses;

[(4)] (5) *The resident's current medications [taken by the resident;] and treatments;*

[(5)] (6) *The resident's known allergies, if any;*

[(6) The name and telephone number of the resident's physician;]

(7) *The resident's dietary restrictions, if any;*

[(7)] (8) Any relevant information concerning the event that precipitated the emergency; and

(8) Appended copies of:

(a) Advance directives;

(b) *Medical Orders for Life-Sustaining Treatment (MOLST) form*

[(b)] (c) Emergency Medical Services (EMS/DNR) Form; and

[(c)] (d) Guardianship orders or powers of attorney, if any.

E. Within 30 days of the date of discharge, the assisted living program shall:

(1) Give each resident or resident's [agent:] *representative*:

(a) A final statement of account; and

(b) Any refunds due; and

(2) Return any money, property, or valuables held in trust or custody by the program.

F. If requested by an individual during the process of discharging a resident, or on its own initiative, the Office of the Attorney General may:

(1) Investigate whether an abuse of a resident's funds contributed to the decision to discharge the resident; and

(2) Make appropriate referrals of the matter to other government agencies.

[.34] .30 Resident's Representative.

A. [An assisted living program] *A licensee* shall recognize the authority of:

(1) A guardian of the person under Estates and Trusts Article, §13-705, Annotated Code of Maryland;

(2) A guardian of the property under Estates and Trusts Article, §13-201, Annotated Code of Maryland;

(3) An advance directive that meets the requirements of Health-General Article, §5-602, Annotated Code of Maryland;

(4) A surrogate decision maker with authority under Health-General Article, §5-605, Annotated Code of Maryland;

(5) A power of attorney that meets the requirements of Estates and Trusts Article, §13-601, Annotated Code of Maryland;

(6) A representative payee or other similar fiduciary; or

(7) Any other person, if that person was designated by a resident who was competent at the time of designation, and the resident or representative has provided the assisted living program with documentation of the designation.

B. An assisted living program shall document in the resident's record the name of the person, if any, with the authority identified in §A of this regulation or include the documentation in the record.

C. An assisted living program may not recognize the authority of a resident's representative if the representative attempts to exceed the authority:

(1) Stated in the instrument that grants the representative authority; or

(2) Established by State law.

[D. A licensee who commits financial exploitation of a resident shall be in violation of this chapter as well as applicable civil and criminal laws.]

[.35] .31 Resident's Rights.

A. A resident of an [assisted living] program has the right to:

(1) Be treated with consideration, respect, and full recognition of the resident's human dignity and individuality;

- (2) Receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State, local, and federal laws and regulations;
- (3) Participate in planning the resident's service plan and medical treatment;
- (4) Choose a pharmacy provider, subject to the provider's reasonable policies and procedures with regard to patient safety in administration of medications;
- (5) Refuse treatment after the possible consequences of refusing treatment are fully explained;
- (6) Privacy, including the right to have a staff member knock on the resident's door before entering unless the staff member knows that the resident is asleep;
- (7) Be free from mental, verbal, sexual, and physical abuse, neglect, involuntary seclusion, and exploitation;
- (8) Be free from physical and chemical restraints;
- (9) Confidentiality;
- (10) Manage personal financial affairs to the extent permitted by law;
- (11) Retain legal counsel;
- (12) Attend or not attend religious services as the resident chooses, and receive visits from members of the clergy;
- (13) Possess and use personal clothing and other personal effects to a reasonable extent, and to have reasonable security for those effects in accordance with the assisted living program's security policy;
- (14) Determine dress, hairstyle, or other personal effects according to individual preference, unless the personal hygiene of a resident is compromised;
- (15) Meet or visit privately with any individual the resident chooses, subject to reasonable restrictions on visiting hours and places, which shall be posted by the assisted living manager;

(16) Make suggestions or complaints or present grievances on behalf of the resident, or others, to the assisted living manager, government agencies, or other persons without threat or fear of retaliation;

(17) Receive a prompt response, through an established complaint or grievance procedure, to any complaints, suggestions, or grievances the resident may have;

(18) Have access to the procedures for making complaints to:

(a) The Long-Term Care Ombudsman Program of the Department of Aging as set forth in COMAR 32.03.02;

(b) The Adult Protective Services Program of the local department of social services;

(c) The Office of Health Care Quality of the Department; and

(d) The designated protection and advocacy agency, if applicable;

(19) Have access to writing instruments, stationery, and postage;

(20) Receive a prompt, reasonable response from an assisted living manager or staff to a personal request of the resident;

(21) Receive and send correspondence without delay, and without the correspondence being opened, censored, controlled, or restricted, except on request of the resident, or written request of the resident's representative;

(22) Receive notice before the resident's roommate is changed and, to the extent possible, have input into the choice of roommate;

(23) Have reasonable access to the private use of a common use telephone within the facility;

and

(24) Retain personal clothing and possessions as space permits with the understanding that the [assisted living] program may limit the number of personal possessions retained at the facility for the health and safety of other residents[.] ; *and*

(25) Return to the program from a hospitalization or a 15 day or greater stay in any skilled facility, unless the manager has documented that the resident's care needs exceed what the program can provide.

B. Confidential Information.

(1) Any case discussion, consultation, examination, or treatment of a resident is:

(a) Confidential;

(b) To be done discreetly; and

(c) Not open to an individual who is not involved directly in the care of the resident, unless the resident or resident's representative permits the individual to be present.

(2) Except as necessary for the transfer of a resident from the assisted living program to another facility, or as otherwise required by law, the personal and medical records of a resident are confidential and may not be released without the consent of the resident or resident's representative, to any individual who is:

(a) Not associated with the [assisted living] program; or

(b) Associated with the [assisted living] program, but does not have a demonstrated need for the information.

(3) The [assisted living] manager shall share resident information with the Department as necessary to administer this chapter.

C. Service Prohibited. A resident may not be assigned to do any work for the assisted living program without the resident's consent and appropriate compensation, unless the resident declines to be compensated.

D. Adult Medical Day Care.

[(1) Adult day care attendance may be encouraged.]

[(2)] (1) Adult day care attendance or attendance at any other structured program shall be voluntary, not mandatory.

[(3)] (2) Adult medical day care availability and policies shall be disclosed in the assisted living program's admission agreement.

E. Notice of Resident's Rights. An assisted living program shall place a copy of the resident's rights, as set forth in this regulation, in a conspicuous location, plainly visible and easily read by residents, staff, and visitors, and provide a copy to each resident and resident's representative on admission.

[.36] .32 Abuse, Neglect, and Financial Exploitation.

A. [An assisted living] A program shall develop and implement policies and procedures prohibiting abuse, neglect, and financial exploitation of residents.

[B. An assisted living program may not knowingly employ an individual who has any criminal conviction or other criminal history that indicates behavior that is potentially harmful to residents, documented through either a criminal history records check or a criminal background check.]

B. A licensee who commits financial exploitation of a resident shall be in violation of this chapter as well as applicable civil and criminal laws.

C. Reports of Abuse, Neglect, or Financial Exploitation.

(1) A licensee or employee of an assisted living program who has witnessed, or otherwise has reason to believe, that a resident has been subjected to abuse, neglect, or financial exploitation shall report the alleged abuse, neglect, or exploitation within 24 hours to:

(a) The Office of Health Care Quality of the Department; and

[*(a) The appropriate local department of social services, Adult Protective Services Program; and*]

(b) One or more of the following:

(i) A local law enforcement agency;

[*(ii) The Office of Health Care Quality of the Department;*]

(ii) The Adult Protective Services Program;

(iii) A representative of the Long-Term Care Ombudsman Program in the Department of Aging or local area agency on aging.

[*(2) If one of the agencies listed in §C(1)(b) of this regulation receives a report, that recipient shall notify:*

(a) The other parties referred to in §C(1)(b) of this regulation; and

(b) The assisted living manager unless the assisted living manager is believed to be involved with the abuse, neglect, or exploitation.]

[*(3) (2) A licensee or an employee may be subject to a penalty imposed by the Secretary of up to \$1,000 for failing to make a report required by §C(1) of this regulation within 3 days after learning of the alleged abuse, neglect, or exploitation.*

[*(4) A person aggrieved by the action of the Secretary under §C of this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation [.64] .59 of this chapter.*

D. Investigations. An [assisted living] program shall:

- (1) Thoroughly investigate all allegations of abuse, neglect, or exploitation and maintain on-site written documentation of the investigation; and
- (2) Take appropriate action to prevent further incidents of abuse, neglect, or exploitation while the investigation is in progress.

E. Investigation Reports.

(1) The licensee or any government agency that investigates the abuse, neglect, or exploitation shall send a report to:

- (a) The Office of Health Care Quality;
- (b) The appropriate law enforcement agency; and
- (c) The Department of Aging, or local area agency on aging.

(2) The entities set forth in §E(1) of this regulation may make a referral, if appropriate, to:

- (a) The *local* State's attorney's office; or
- (b) The Medicaid Fraud Control Unit of the Criminal Division of the Office of the Attorney General.

F. Immunity from Civil Liability. An individual who, acting in good faith, makes a report under this regulation has immunity from liability as described in Health-General Article, §19-347(g), Annotated Code of Maryland.

G. Notice. The [assisted living] program shall post signs that set forth the reporting requirements of §C(1) of this regulation, conspicuously in the employee and public areas of the facility.

[.37] .33 Restraints.

A. The resident has the right to be free of restraints used in violation of this chapter.

B. A protective device as defined in Regulation .02B of this chapter is not considered a restraint.

C. Improper Use of Chemicals or Drugs. Chemicals or drugs may not be used for residents in the following ways:

- (1) In excessive dose, including duplicate drug therapy;
- (2) For excessive duration, without adequate monitoring;
- (3) Without adequate indications for its use; or
- (4) In the presence of adverse consequences which indicate the dose should be reduced or discontinued.

D. Improper Use of Physical Restraints. Residents may not be physically restrained:

- (1) For discipline or convenience; or
- (2) If a restraint is not ordered by a physician to treat the resident's symptoms or medical conditions.

E. Restraint Orders.

- (1) Any restraint shall be ordered by a physician and shall specify:
 - (a) The purpose of the restraint;
 - (b) The type of restraint to be used; and
 - (c) The length of time the restraint shall be used.
- (2) A resident may not have an as-needed restraint order.
- (3) Orders for the use of a restraint shall be time specific.
- (4) A resident may not remain in a restraint for more than 2 hours without a change in position and toileting opportunity.
- (5) If an order for the use of a restraint is to be continued, the order shall be renewed at least every 7 days by a physician.

(6) The delegating nurse/*case manager* shall provide training to staff in the appropriate use of the restraint ordered by the [physician.] *health care practitioner*.

F. Bed Rails. Bed rails may be considered restraints depending upon the reason for the use of bed rails and how the bed rails are used. This determination is based upon the resident and the effect that bed rails would have upon the resident, as documented in the resident's record.

G. The program shall notify the resident's family or the resident's representative each time a restraint is used.

[.38] .34 Protection of a Resident's Personal Funds.

A. A resident may:

(1) Manage the resident's financial affairs; or

(2) Consistent with State law, choose any individual who is willing and able to handle the resident's financial affairs.

B. [An assisted living program] *A licensee* may refuse to handle a resident's financial affairs.

C. [An assisted living program] *A licensee* may not manage a resident's funds without an express written request from the:

(1) Resident; or

(2) Resident's [agent.] *representative*.

D. Management of Personal Funds. On the written authorization of a resident or agent, an assisted living program shall hold, safeguard, manage, and account for the resident's personal funds as specified in this regulation.

E. Safeguards Required.

(1) Each [assisted living program] *licensee* shall develop adequate safeguards to secure the personal funds of a resident that are entrusted to the assisted living program.

(2) [An assisted living program] A *licensee* to which \$300 or more of a resident's personal funds is entrusted shall deposit the money in an interest-bearing bank account. If an assisted living program is entrusted with a resident's personal funds that are less than \$300, the assisted living program may deposit the funds in a bank account.

(3) [An assisted living program] A *licensee* that manages residents' personal funds, regardless of the amount managed, shall maintain on behalf of the residents:

(a) A bond, with the State as obligee, equal to the average monthly balance of all the funds held or managed by the licensee for the residents of the facility;

(b) A letter of credit, with the State as obligee, equal to the average monthly balance of all the funds held or managed by the licensee for the residents of the facility; or

(c) Net assets equal to the average monthly balance of all the funds held or managed by the licensee for the residents of the facility.

(4) The bond, letter of credit, or list of assets shall be kept at the assisted living program for inspection by the Department or its designee.

F. Establishment of Resident Accounts.

(1) When [an assisted living program] a *licensee* manages a resident's financial affairs, the [assisted living program] *licensee* shall:

(a) Establish and maintain a system that ensures a full, complete, and separate accounting, in accordance with generally accepted accounting principles, of a resident's personal funds entrusted to the [assisted living program] *licensee*; and

(b) Keep the accounts of its residents separate from the accounts of the facility.

(2) Bank accounts opened for residents' personal funds by [an assisted living program] *a licensee* shall have minimal or no fees.

(3) Any interest earned on the bank accounts shall accrue to the resident.

(4) Any fees charged by the bank for the maintenance of the account shall be paid by the resident.

G. Records of Resident Personal Funds. For all resident funds entrusted to [an assisted living program, the assisted living program] *a program, the licensee* shall:

(1) Maintain an individual record for each resident, which includes the following information for each transaction:

(a) The date of the transaction;

(b) The type of transaction, whether it is a deposit, withdrawal, or any other transaction; and

(c) The balance of funds after the completion of the transaction;

(2) Make available for inspection by the resident, or, when applicable, the resident's agent, a statement of the resident's account; and

(3) Make available at the assisted living program, for audit by the Department or its designee, records pertaining to each resident's personal funds, including the written authorization required by §D of this regulation.

H. Fire and Theft Coverage. For all resident funds entrusted to [an assisted living program, the assisted living program] *a licensee, the licensee* shall establish and maintain adequate fire and theft coverage to protect a resident's funds that are on the premises of the [assisting living] program.

I. Availability of Personal Funds.

(1) A resident, or if applicable, the resident's legally authorized representative, has the right to access funds entrusted to the assisted living program:

(a) During normal business hours, if the funds are held within the facility; or

(b) Within 3 banking days, if a bank, the State, or a county or municipal treasurer holds the money.

(2) If [an assisted living] *a* program transfers or discharges a resident, the [assisted living program] *licensee* shall:

(a) Request and follow the resident's written instructions for transferring the resident's funds;

(b) Return, upon the resident's or, when applicable, the resident's [agent's] *representative's* demand, the resident's money that the assisted living program has in its possession and have the resident or [agent] *representative* sign a receipt for the money; or

(c) Make available to the resident or the resident's [agent] *representative*, within 3 banking days, the resident's money which is held in an account with a bank, the State, or county or municipal treasurer.

J. Ownership Change.

(1) If the ownership of [an assisted living] *a* program changes, the previous owner, with the approval of each resident, shall give the new owner a certified written audit of all funds that residents have entrusted to the [assisted living program.] *licensee*.

(2) The new owner shall give to the previous owner a signed receipt acknowledging the receipt of the accounts.

(3) The new owner shall comply with the safeguard requirements of §E of this regulation.

(4) If the resident wants the new owner to hold, safeguard, manage, or account for the residents personal funds, then a new written authorization in compliance with §D of this regulation shall be executed.

K. Resident Liability. A resident is not liable for any act or omission of the [assisted living program] *licensee* concerning the finances of the [assisted living] program or the resident.

[.39] .35 Misuse of Resident's Funds.

A. A person may not misappropriate a resident's assets or income, including spending the resident's assets or income against or without the consent of the resident or, if the resident is unable to consent, the resident's agent.

B. An individual who witnessed, or otherwise has reason to believe, that there has been an abuse of a resident's funds shall make a complaint within 24 hours to the:

- (1) Appropriate law enforcement agency;
- (2) Office of Health Care Quality of the Department;
- (3) The Department of Aging or the local area agency on aging; or
- (4) Local offices of the Department of Human Resources or Adult Protective Services.

C. The agency that investigates the abuse of a resident's funds shall send a report to any other agency listed under §B of this regulation that participates in the licensure or subsidizes the care of the resident. Any agency may make a referral to the State's Attorney's Office, or to the Medicaid Fraud Control Unit of the Criminal Division of the Office of the Attorney General, if appropriate.

[.40 Approval of Burial Arrangements for Unclaimed Deceased Residents.]

[.41] .36 General Physical Plant Requirements.

A. The facility, which includes buildings, common areas, and exterior grounds, shall be kept:

- (1) In good repair;
- (2) Clean;
- (3) Free of any object, material, or condition that may create a health hazard, accident, or fire;
- (4) Free of any object, material, or condition that may create a public nuisance; and
- (5) Free of insects and rodents.

B. Bathtubs, shower stalls, and lavatories may not be used by the staff for laundering or storing soiled linens.

C. The [assisted living] program shall provide in the resident's room adequate storage space for excess supplies, some personal possessions of residents, and similar items which is:

- (1) Protected from the elements; and
- (2) Secure, fixed, and locked.

D. Residents may possess their own cleaning supplies and personal hygiene items if the [assisted living] manager and delegating nurse/*case manager* have determined that the products would not present a threat to the safety of the resident or others and this decision is documented in the records. The cleaning supplies and personal hygiene items shall be kept in the resident's room and out of view of other residents when the materials are not in use.

[.42] .37 Water Supply.

A. Approved Source. A facility shall be served by water from an approved public water supply. If an approved public water supply is not available, a private water supply may be accepted if it

is approved by the local jurisdiction in which the program is located or a private certified vendor to be submitted with an initial or renewal licensure application.

B. Adequacy. The water supply shall be adequate in quantity and delivered under sufficient pressure to satisfactorily serve all fixtures in the facility.

C. Hot Water Temperature. Hot water accessible to residents shall be blended externally to the hot water generator, by either individual point-of-use control valves of the anti-scald or thermostatic mixing valve type, to a maximum temperature of 120°F and a minimum temperature of 100°F at the fixture.

[.43] .38 Sewage Disposal.

The facility shall be served by an approved public sewage disposal system, if available. If an approved public sewage disposal system is not available, a private sewage disposal system may be accepted if approved by the local jurisdiction in which the program is located.

[.44] . 39 Security.

A. The facility shall provide:

- (1) Exterior lockable doors and windows; and
- (2) An effective automated device or system to alert staff to individuals entering or leaving the building.

B. A facility need not use an automated alert for an exit door when the exit is staffed by a receptionist or other staff member who views and maintains a log of individuals entering and leaving the facility.

[.45] .40 Assist Rails.

A. An assisted living program shall provide assist rails in stairways used by residents and for all toilets, showers, and bathtubs used by residents unless, through a waiver request, the Department determines that the physical abilities of the residents make these devices unnecessary for resident safety.

B. An assisted living program with a licensed capacity of 17 or more beds shall also provide assist rails on both sides of corridors used by residents.

[.46] .41 Emergency Preparedness.

A. The facility shall comply with:

(1) All applicable local fire and building codes; and

(2) The Life Safety Code, NFPA 101, including Chapter 24 of NFPA 101 if the facility is a one or two family dwelling as defined by NFPA 101.

B. Fire Extinguishers. [An assisted living] A program shall:

(1) Ensure that fire extinguishers are:

(a) Located on each floor and adjacent to, or in, special hazard areas, such as:

(i) Furnace rooms;

(ii) Boiler rooms;

(iii) Kitchens; or

(iv) Laundries;

(b) Of standard and approved types; and

(c) Installed and maintained to be conveniently available for use at all times; and

(d) Serviced annually, as evidenced by documentation maintained on-site, by an individual or company licensed by the Maryland State Fire Marshall; and

(2) Initially and at least annually instruct staff in the use of fire extinguishers.

C. Emergency and Disaster Plan.

(1) Compliance with the requirements of §C(2)-(10) may be evidenced by the completion, in its entirety, of the Assisted Living Emergency Preparedness Packet.

[(1)] (2) The [assisted living] program shall develop an emergency and disaster plan that includes procedures that shall be followed before, during, and after an emergency or disaster, including:

(a) Evacuation, transportation, or shelter in-place of residents;

(b) Notification of families and staff regarding the action that will be taken concerning the safety and well-being of the residents;

(c) Staff coverage, organization, and assignment of responsibilities for ongoing shelter in-place or evacuation, including identification of staff members available to report to work or remain for extended periods; and

(d) The continuity of services, including:

(i) Operations, planning, financial, and logistical arrangements;

(ii) Procuring essential goods, equipment, and services to sustain operations for at least 72 hours;

(iii) Relocation to alternate facilities or other locations; and

(iv) Reasonable efforts to continue care.

[(2)] (3) The licensee shall have a tracking system to locate and identify residents in the event of displacement, an emergency, or a disaster that includes at a minimum the:

(a) Resident's name;

(b) Time that the resident was sent to the initial alternative facility or location; and

(c) Name of the initial alternative facility or location where the resident was sent.

[(3)] (4) When the [assisted living] program relocates residents, the program shall send [a brief medical fact sheet] with each resident *an emergency data sheet, as in Regulation .29 of this chapter.* [that includes at a minimum the resident's:

(a) Name;

(b) Medical condition or diagnosis;

(c) Medications;

(d) Allergies;

(e) Special diets or dietary restrictions; and

(f) Family or legal representative contact information.

(4) The brief medical fact sheet for each resident described in §C(3) of this regulation shall be:

(a) Updated upon the occurrence of change in any of the required information;

(b) Reviewed at least monthly; and

(c) Maintained in a central location readily accessible and available to accompany residents in case of an emergency evacuation.]

(5) The licensee shall review the emergency and disaster plan at least annually and update the plan as necessary.

(6) The licensee shall:

(a) Identify a facility, facilities, or alternate location or locations that have agreed to house the licensee's residents during an emergency evacuation; and

(b) Document an agreement with each facility or location.

(7) The licensee shall:

(a) Identify a source or sources of transportation that have agreed to safely transport residents during an emergency evacuation; and

(b) Document an agreement with each transportation source.

(8) Upon request, a licensee shall provide a copy of the facility's emergency and disaster plan to the local emergency management organization for the purpose of coordinating local emergency planning. The licensee shall provide the emergency and disaster plan in a format, *such as the Assisted Living Emergency Preparedness Packet*, that is mutually agreeable to the local emergency management organization.

(9) The licensee shall identify an emergency and disaster planning liaison for the facility and shall provide the liaison's contact information to the local emergency management organization.

(10) The licensee shall prepare an executive summary of its evacuation procedures to provide to a resident, family member, or legal representative upon request. The executive summary shall, at a minimum:

(a) List means of potential transportation to be used in the event of evacuation;

(b) List potential alternative facilities or locations to be used in the event of evacuation;

(c) Describe means of communication with family members and legal representatives;

(d) Describe the role of the resident, family member, or legal representative in the event of an emergency situation; and

(e) Notify families that the information provided may change depending upon the nature or scope of the emergency or disaster.

D. Evacuation Plans. The facility shall conspicuously post individual floor plans with designated evacuation routes on each floor.

E. Orientation and Drills.

(1) The licensee shall:

(a) Orient staff to the emergency and disaster plan and to their individual responsibilities within 24 hours of the commencement of job duties; and

(b) Document completion of the orientation in the staff member's personnel file through the signature of the employee.

(2) Fire Drills.

(a) The [assisted living] program shall conduct fire drills at least quarterly on all shifts.

(b) Documentation. The [assisted living] program shall:

(i) Document completion of each drill;

(ii) Have all staff who participated in the drill sign the document; [and]

(iii) Document the fire scenario used in the drill;

(iv) Document the steps taken by staff during the drill;

(v) Document the reaction of staff during the drill;

(vi) Document any opportunities for improvement identified as a result of the drill; and

[(iii)] (vii) Maintain the documentation on file for a minimum of 2 years.

(3) Semiannual Disaster Drill.

(a) The [assisted living] program shall conduct a semiannual emergency and disaster drill on all shifts during which it practices evacuating residents or sheltering in-place so that each is practiced at least one time a year.

(b) The drills may be conducted via a table-top exercise if the program can demonstrate that moving residents will be harmful to the residents.

(c) Documentation. The [assisted living] program shall:

(i) Document completion of each disaster drill or training session;

- (ii) Have all staff who participated in the drill or training sign the document;
- iii) Document the type of disaster utilized for the drill or training;*
- (iv) Document the steps taken by staff during the drill or discussed during the training;*
- (v) Document the reaction of staff during the drill or training;*
- [(iii)] *(vi) Document any opportunities for improvement as identified as a result of the drill; and*
- [(iv)] *(vii) Keep the documentation on file for a minimum of 2 years.*

(4) The licensee shall cooperate with the local emergency management agency in emergency planning, training, and drills and in the event of an actual emergency.

F. Emergency Electrical Power Generator. *A program with 50 or more residents shall have on the premises an emergency electrical power generator which meets the requirements of Health-General Article, §19-1812, Annotated Code of Maryland.*

[(1) Generator Required. By October 1, 2009, an assisted living program with 50 or more residents shall have an emergency electrical power generator on the premises, unless the program meets the requirements of §F(7) of this regulation.

(2) Generator Specifications. The power source shall be a generating set and prime mover located on the program's premises with automatic transfer. The emergency generator shall:

- (a) Be activated immediately when normal electrical service fails to operate;
- (b) Come to full speed and load acceptance within 10 seconds; and
- (c) Have the capability of 48 hours of operation of the systems listed in §F(5) of this regulation from fuel stored on-site.

(3) Test of Emergency Power System.

- (a) The program shall test the emergency power system once each month.

- (b) During testing of the emergency power system, the generator shall be exercised for a minimum of 30 minutes under normal emergency facility connected load.
- (c) Results of the test shall be recorded in a permanent log book that is maintained for that purpose.
- (d) The licensee shall monitor the fuel level of the emergency generator after each test.
- (4) The emergency power system shall provide lighting in the following areas of the facility:
 - (a) Areas of egress and protection as required by the State Fire Prevention Code and Life Safety Code 101 as adopted by the State Fire Prevention Commission;
 - (b) Nurses' station;
 - (c) Drug distribution station or unit dose storage;
 - (d) An area for emergency telephone use;
 - (e) Boiler or mechanical room;
 - (f) Kitchen;
 - (g) Emergency generator location and switch gear location;
 - (h) Elevator, if operable on emergency power;
 - (i) Areas where life support equipment is used;
 - (j) If applicable, common areas or areas of refuge; and
 - (k) If applicable, toilet rooms of common areas or areas of refuge.
- (5) Emergency electrical power shall be provided for the following:
 - (a) Nurses' call system;
 - (b) At least one telephone in order to make and receive calls;
 - (c) Fire pump;
 - (d) Well pump;

- (e) Sewerage pump and sump pump;
- (f) If required, for evacuation purposes an elevator;
- (g) If necessary, heating equipment needed to maintain a minimum temperature of 70°F (24°C) in all common areas or areas of refuge;
- (h) Life support equipment; and
- (i) Nonflammable medical gas systems.

(6) Common Areas or Areas of Refuge. If the emergency power system does not provide heat to all resident rooms and toilet rooms, the program shall provide common areas or areas of refuge for all residents. The areas shall meet the following requirements:

- (a) The common area or areas of refuge shall maintain a minimum temperature of 70°F (24°C);
- (b) Heated toilet rooms shall be provided adjacent to the common areas or areas of refuge; and
- (c) The program facility shall provide to the Department a written plan that defines the:
 - (i) Specified common areas or areas of refuge;
 - (ii) Paths of egress from the common areas or areas of refuge; and
 - (iii) Provision for light, heat, food service, and washing and toileting of residents.

(7) Applicability of Emergency Power Requirements.

- (a) Within 36 months of the effective date of this chapter, existing programs with 50 or more beds shall complete the installation and acceptance of a working system as required in this regulation.
- (b) An assisted living program shall be exempt from the requirements of §F of this regulation if the program can safely transfer residents through an enclosed corridor to a building that is equipped with an electrical power generator that satisfies the requirements of §E of this regulation.

(c) An assisted living program may request a waiver from the requirements of §F of the regulation in accordance with the procedures outlined in COMAR 10.07.14.08 on a year-to-year basis. The program shall demonstrate in the waiver request financial hardship that would adversely affect the program's viability.

(d) When the Department grants a waiver to an assisted living program for the requirements of §F of this regulation, the assisted living program shall:

(i) Disclose in writing to current and prospective residents that the program does not have an emergency generator; and

(ii) Develop a plan to follow in the event of a loss of electrical power.]

.42 Smoking.

Indoor areas shall be smoke-free in compliance with the Clean Indoor Air Act of 2007.

[A. The assisted living program shall have a written smoking policy that indicates whether or not the program permits smoking.

B. When smoking is permitted, the assisted living program shall:

(1) Establish smoking policies and procedures which are designed to minimize the risk of fire;

(2) Provide in the policies and procedures at least the following:

(a) Prohibit smoking in any hazardous location and in any room or compartment where flammable liquids, combustible gases, or oxygen are used or stored;

(b) Designate smoking areas; and

(c) Provide the smoking areas with ash trays of noncombustible material and safe design; and

(3) Provide smoking areas that comply with COMAR 09.12.23, if the facility is considered an "enclosed work place" as defined in COMAR 09.12.23, including the ventilation requirements set forth in that regulation.]

[.48] .43 Common Use Areas.

A. Multipurpose Space.

(1) The [assisted living program] *licensee* shall provide at least 35 square feet of usable multipurpose floor space per licensed bed. Multipurpose space includes:

- (a) Dining;
- (b) Living; and
- (c) Indoor recreational space.

(2) Usable floor space in a facility does not include:

- (a) Service areas;
- (b) Administrative offices;
- (c) Entrance ways;
- (d) Closets;
- (e) Lockers;
- (f) Wardrobes;
- (g) Spaces where ceiling heights are less than acceptable for habitable space, as defined by the applicable local building code; or
- (h) Corridors.

(3) The [assisted living program] *licensee* may not restrict residents from any area constituting multipurpose space unless a comparable multipurpose space is available for resident use.

B. Living Room.

(1) The [assisted living program] *licensee* shall make at least one living room available for resident use.

(2) The [assisted living program] *licensee* shall ensure that the living rooms are:

(a) Well lit and ventilated;

(b) Easily accessible; and

(c) Furnished with a sufficient number of reading lamps, tables, comfortable chairs, or sofas based on residents' needs.

C. Outdoor Space. An assisted living program shall:

(1) Provide or arrange for outside activity space;

(2) Adequately light outside activity space during all times residents have access to the space;

and

(3) Provide the necessary security and supervision of the outside activity space sufficient to meet the needs of the residents.

D. Public Toilets.

(1) An assisted living program with a licensed capacity of 17 or more beds shall provide public restrooms that are:

(a) Sufficient in number, and appropriately located, to serve both residents and visitors; and

(b) Located close enough to activity areas to allow residents with incontinence to participate comfortably in activities and social opportunities.

(2) The public toilet is not calculated in the ratio required by [Regulation .50A] .45A of this chapter.

E. Dining Room. An assisted living program shall provide a well lit, adequately ventilated, and appropriately furnished dining area.

F. Kitchen.

(1) [An assisted living program] A *program* shall have a kitchen that has adequate:

- (a) Storage, refrigerator, and freezer space for perishable and nonperishable foods;
- (b) Food preparation area or areas with cleanable surfaces;
- (c) Equipment to deliver foods at safe and palatable temperatures;
- (d) Space and equipment to wash, sanitize, and store utensils;
- (e) Space to store and clean garbage cans either within or outside the kitchen;
- (f) Ice-making capabilities;
- (g) Equipment for the preparation of food, unless all food service is catered; and
- (h) Equipment for serving and distributing food to residents.

(2) [An assisted living] A program with a licensed capacity of 17 or more beds shall comply with the food service facility regulations in COMAR 10.15.03.

(3) [An assisted living] A program with fewer than 17 residents is not required to comply with COMAR 10.15.03 unless required to comply by its local jurisdiction or the Department determines and directs that a program shall comply with particular provisions of COMAR 10.15.03 in order to minimize health risks to its residents.

(4) An assisted living program with fewer than 17 residents:

- (a) Shall obtain food from sources that comply with all laws and regulations relating to food, food processing, food handling, and food labeling;
- (b) Shall protect food from contamination while being stored, prepared, displayed, served, or transported;

- (c) Shall promptly discard the following:
 - (i) Spoiled food;
 - (ii) Swelled, rusty, or leaky canned foods; and
 - (iii) Food exposed to fire, smoke, or water damage;
- (d) May not serve to residents home-canned food or food in a hermetically sealed container as defined in COMAR 10.15.03.02B, which was prepared in a place other than a licensed food processing establishment;
- (e) Shall maintain potentially hazardous food as defined in COMAR 10.15.03.02B at 45°F or below, or 140°F or above, until served to residents;
- (f) Shall maintain food equipment, appliances, and utensils in a clean and sanitary manner and in good repair;
- (g) Shall maintain food contact surfaces smooth and free of breaks, open seams, cracks, chips, and pits;
- (h) Shall maintain floors, walls, and storage areas in a clean and sanitary manner and in good repair;
- (i) Shall provide refrigeration operated at or below 45°F and equipped with an indicating thermometer graduated at 2°F intervals; and
- (j) Shall provide freezer space operated at 0°F or less and equipped with an indicating thermometer graduated at 2°F intervals.

[.49] .44 Resident's Room and Furnishings.

A. Resident Room.

- (1) More than two residents may not share a resident room.

(2) [An assisted living program] A *licensee* shall provide at least 80 square feet of functional space for single occupancy resident rooms and 120 square feet of functional space for double occupancy resident rooms.

(3) Functional space in a resident room does not include the floor area of:

(a) Toilet rooms and bathing facilities;

(b) Closets, wardrobes, bureaus, or lockers;

(c) Entrance vestibules; or

(d) The arc of any door, excluding closet doors, that opens into the room.

(4) A room may not be used as a resident room if:

(a) The only access to the room is through a bathroom or other resident room; or

(b) In order to move from the room to a living room or dining room a person must first go outdoors.

(5) For a program with a licensed capacity of 17 or more beds, a room may not be used as a resident room if in order to move from the room to a living room or dining room, an individual is required to first pass through a kitchen.

(6) Resident rooms shall be for the private use of the assigned resident or residents. A resident's room shall have a latching door and may have a lock on the resident room side of the door at the licensee's option.

(7) If a resident in a double occupancy room requests dividers, curtains, or screens between the beds to ensure privacy, the assisted living program shall furnish them.

(8) A resident shall have access to a mirror either in the resident's room or in the resident's private bathroom, unless a physician documents in the resident's record that access to a mirror would be detrimental to the health of the resident.

(9) A resident's room shall have window shades or their equivalent.

(10) The [assisted living program] *licensee* shall provide adequate closet or wardrobe space, conveniently located to allow each resident to keep personal clothing.

B. Furnishings. Unless a resident brings personal furnishings, or as otherwise specified in the resident agreement, the assisted living program shall provide the following to each resident:

(1) A bed, which may not be a rollaway, cot, or folding bed, but shall:

(a) Be at least 36 inches wide;

(b) Be in good repair; and

(c) Include:

(i) A clean, comfortable mattress sized to fit the bed frame; and

(ii) At least two clean, comfortable pillows;

(2) A bedside stand with a drawer;

(3) A comfortable chair;

(4) At least two dresser drawers in a chest of drawers;

(5) A bedside or over-the-bed lamp; and

(6) A sufficient supply of bath and bed linens.

C. A competent resident may waive the resident's right to one or all of the furnishings listed in §B of this regulation by signing a waiver and having the waiver placed in the resident's record.

D. The [assisted living program] *licensee* shall inform a resident of all of the furnishings that the program provides. The resident may choose to provide a personal bed or other furnishings if they are not hazardous.

[.50] .45 Bathrooms for Residents.

A. Toilets.

- (1) [An assisted living program] *A licensee* shall provide toilets in a separate room or compartment with latching hardware for privacy.
- (2) Buildings with one to eight occupants shall have a minimum ratio of one toilet to four occupants.
- (3) Buildings with nine or more occupants shall have a minimum ratio of one toilet to four occupants and a minimum of one toilet for each floor on which a resident room is located.

B. Hand Sinks.

- (1) Buildings with one to eight occupants shall have a minimum ratio of one hand sink to four occupants.
- (2) Buildings with nine or more occupants shall have a minimum ratio of one hand sink to four occupants and a minimum of one hand sink for each floor on which a resident room is located.

C. Bathtubs or Showers. An assisted living program shall:

- (1) Provide residents with bathtubs or showers that are enclosed in a separate room or compartment with latching hardware for privacy; and
- (2) Have a minimum ratio of one bathtub or shower to eight occupants.

[.51] .46 Illumination.

A. Resident's Room.

- (1) [An assisted living program] *A licensee* shall ensure that a resident's room:
 - (a) Is lighted by an outside window that:
 - (i) Contains a glass surface; and
 - (ii) Has square footage at least equal to 10 percent of the room's required floor area;

- (b) Has a minimum of 60 wattage or the equivalent of artificial light provided for reading; and
- (c) Is provided with additional artificial light as required for other uses, such as night lights to enable residents to get to the bathroom at night.

(2) [An assisted living program] A *licensee* shall provide additional lighting or wattage upon reasonable request by the resident or the resident's legal representative.

B. Common Use Areas. [An assisted living program] A *licensee* shall ensure that common use areas, such as entrances, hallways, inclines, ramps, cellars, attics, storerooms, kitchens, and laundries, have sufficient artificial lighting to prevent accidents and promote efficient service.

C. The [assisted living program] *licensee* shall provide sufficient light to meet the resident's needs.

[.52] .47 Heating, Ventilation, and Air Conditioning.

A. [An assisted living] A program may not use space heaters unless approved by the State or local fire authorities.

B. Minimum Temperature. The facility shall have a system that provides in areas used by residents a minimum temperature of 70°F in cold weather and a maximum temperature of 80°F in hot weather.

C. Temperature Control.

(1) [An assisted living] A program with a licensed capacity of one to eight beds shall provide at least one thermostat per building.

(2) [An assisted living] A program with a licensed capacity of nine or more beds shall provide for each resident's room:

- (a) A thermostat; or

(b) An approved mechanical device for modulating a room's temperature, such as adjustable vanes in a hot air vent.

D. [An assisted living program] *A licensee* shall:

(1) Ensure that all rooms and areas have sufficient ventilation to prevent excessive heat, steam, condensation, smoke, and other noxious odors; and

(2) Provide forced mechanical exhaust ventilation or an approved equivalent for:

(a) All bathing compartments;

(b) Toilet rooms;

(c) Any area used for toileting;

(d) Soiled utility rooms;

(e) Designated smoking rooms; and

(f) Other rooms, as determined by [the Department.] *OHCQ*.

[.53] .48 Radiators.

A. If steam or hot water plumbing reaches a temperature in excess of 130°F or directly powered radiating surfaces are located in areas of the facility that are accessible to residents, the assisted living program shall position or shield the radiating surfaces in a manner to prevent resident contact.

B. The [assisted living] program shall ensure that the radiator shielding device:

(1) Allows for efficient heat transfer;

(2) Is constructed to minimize vermin harborage;

(3) Is constructed of easily cleanable materials; and

(4) Complies with all State and local fire codes.

[.54] .49 Laundry.

- A. [An assisted living program] *A licensee* shall furnish laundry service, either on-site or off-site.
- B. [An assisted living program] *A licensee* shall ensure that the laundry is:
- (1) Adequate to meet the needs of the residents;
 - (2) Processed and handled in a manner to prevent the spread of infection; and
 - (3) Adequately sanitized by the use of sufficient hot water or appropriate chemical agents, or a combination of both.
- C. Unless otherwise agreed by the [program] *licensee* and the resident, dry cleaning services are not considered part of required laundry services in this chapter.

[.55] .50 Telephones.

- A. [An assisted living] A program with a licensed capacity of one to eight beds shall provide:
- (1) At least one land line telephone for common use; and
 - (2) A posting next to the telephone that contains the telephone numbers for the local police department, fire department, and relief personnel.
- B. [An assisted living] A program with a licensed capacity of nine to 16 beds shall provide at least one common-use telephone. If there are nine or more residents that do not have private telephones in their own rooms, the assisted living program shall provide a second common-use telephone.
- C. [An assisted living] A program with a licensed capacity of 17 or more beds shall provide:
- (1) Wiring in each resident's room that would allow a resident to use the resident's own private telephone; and

(2) An adequate number of telephone lines and common-use telephones to accommodate those residents who do not have private telephones installed in their rooms.

[.56] .51 Sanctions.

A. If the Secretary determines that [an assisted living program] *licensee* has violated this chapter, the Secretary, in addition to the sanctions set forth in this chapter may:

(1) Restrict the number of residents the [assisted living program] *licensee* may admit in accordance with Health-General Article, §19-328, Annotated Code of Maryland;

(2) Require the [assisted living program] *licensee* to reduce the number of residents in care;

[(3)] Restrict the levels of care for which the assisted living program may provide services;]

[(4)] (3) Require the licensee, and any of its staff, to receive remedial instruction in a specific area;

[(5)] (4) Require the [assisted living program] *licensee* to use the services of a management firm approved by the Department;

[(6)] (5) Mandate staffing patterns which specify number of [personnel, personnel] *staff, staff* qualifications, or both;

[(7)] (6) Require the establishment of an escrow account in accordance with Health-General Article, §19-362, Annotated Code of Maryland;

[(8)] (7) Direct the licensee to correct the violations in a specific manner or within a specified time frame, or both;

[(9)] (8) Notify, or require the assisted living program to notify, the representative or family of any resident who is affected by the noncompliance;

[(10)] (9) Increase the frequency of monitoring visits during a specified period of time; or

[(11)] (10) Enter into an agreement with the licensee establishing certain conditions for continued operation, including time limits for compliance.

B. If the Secretary determines that the licensee has violated a condition or requirement of an imposed sanction, the Secretary may suspend or revoke the license.

C. Appeals.

(1) A licensee aggrieved by the imposition of a sanction under §A(1), (2), or (3) or B of this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation [.64] .59 of this chapter.

(2) A licensee aggrieved by the imposition of a sanction under §A(7) §A(6) of this regulation may appeal the Secretary's action in accordance with Health-General Article, §§19-364 and 19-367, Annotated Code of Maryland.

(3) This section does not, however, create an appeal for a decision made under Regulation .22I .19B of this chapter.

[(57)] .52 Civil Money Penalties.

A. The Secretary may impose a civil money penalty on a person if:

- (1) The person maintains or operates an unlicensed assisted living program;
- (2) A deficiency or an ongoing pattern of deficiencies exists in the assisted living program; or
- (3) The person falsely advertises a program in violation of Regulation .06B(2) .05B(2) of this chapter.

B. In determining whether a civil money penalty is to be imposed, the Secretary shall consider the following factors:

- (1) Nature, number, and seriousness of the deficiencies;

(2) The extent to which the deficiency or deficiencies are part of an ongoing pattern during the preceding 24 months;

(3) The degree of risk to the health, life, or safety of the residents of the program that is caused by the deficiency or deficiencies;

(4) The efforts made by, and the ability of the program to correct, the deficiency or deficiencies; and

(5) An assisted living program's prior history of compliance.

C. If the Department determines that a deficiency or an ongoing pattern of deficiencies exists, the Department shall notify the program of the deficiency or deficiencies and may:

(1) Impose a per day civil money penalty until sustained compliance has been achieved;

(2) Permit the program the opportunity to correct the deficiencies by a specific date; or

(3) Impose a per instance civil money penalty for each instance of violation.

D. If the Department permits a program the opportunity to correct the deficiencies by a specific date, and the program fails to comply with this requirement, the Department may impose a per day civil money penalty for each day of violation until correction of the deficiency or deficiencies has been verified and sustained compliance has been maintained.

E. If the Department proposes to impose a civil money penalty, the Secretary shall issue an order which shall state the:

(1) Deficiency or deficiencies on which the order is based;

(2) Amount of civil money penalties to be imposed; and

(3) Manner in which the amount of civil money penalties imposed was calculated.

[F. An order issued pursuant to this regulation shall be void unless issued within 60 days of the inspection or reinspection at which the deficiency is identified.]

F. If the licensee fails to pay an imposed civil money penalty by the specified due date, the Department may deny the licensee's application for renewal of the program's license.

G. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .59 of this chapter.

[.58] .53 Amount of Civil Money Penalties.

A. A civil money penalty imposed on a person under this chapter may not exceed [\$10,000 for each offense.] ;

(1) \$20,000 for the first offense; and

(2) \$30,000 for each subsequent offense.

B. In setting the amount of the civil money penalty under this chapter, the Secretary shall consider the following factors:

(1) Nature, number, and seriousness of the deficiencies;

(2) The degree of risk to the health, life, or safety of the residents of the program that is caused by the deficiency or deficiencies;

(3) The efforts made by, and the ability of the program to correct, the deficiency or deficiencies;

(4) Whether the amount of the civil money penalty will jeopardize the financial ability of the program to continue operation as a program; and

(5) Other factors as justice may require.

C. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation [.64] .59 of this chapter.

[.59] .54 Civil Money Penalties — Hearings.

A. A hearing on the appeal shall be held consistent with the State Government Article, Title 10, Annotated Code of Maryland.

B. The Secretary shall have the burden of proof with respect to the imposition of the civil money penalties under this chapter.

[.60] .55 Criminal Penalties.

[A. Operating Without a License.]

[(1)] A. A person may not knowingly and willfully operate, maintain, or own an assisted living program without a license.

[(2)] B. A person who violates [§A(1)] §A of this regulation is guilty of a felony and on conviction is subject to:

[(a)] (1) For a first offense, a fine not exceeding \$10,000, imprisonment not exceeding 5 years, or both; and

[(b)] (2) For a subsequent offense, a fine not exceeding \$20,000, imprisonment not exceeding 5 years, or both.

[(3)] C. When the Department finds an assisted living program to be in violation of [§A(1)] §(A) of this regulation, the Department shall send written notice to the program 30 days before the State files charges under [§A(1))] §(A) of this regulation in order to give the program an opportunity to come into compliance with the licensure requirements.

[(4)] D. A person may not be subject to §A(2) §B of this regulation if the person has:

[(a)] (1) Applied in good faith to the Department for an assisted living program license;

[(b)] (2) Is awaiting a decision from the Department regarding the application; and

[(c)] (3) Has not been denied an assisted living program license on a prior occasion.

[(5)] E. In recommending the amount of civil money penalty under §A(2) §B of this regulation, the State shall consider factors including the:

(a) Nature, number, and seriousness of the violations; and

(b) Ability of the assisted living program to pay the penalty.

[B. A person maintaining and operating an assisted living program which is in violation of this chapter is guilty of a felony, and, on conviction, shall be fined not more than \$1,000. Each day that the assisted living program operates after the first conviction, without correction of the cited violation, is considered a subsequent offense and may subject the operator to further prosecution.]

[(61)] .56 Health Care Quality Account.

A. The Department shall establish a health care quality account in the Department for assisted living programs.

B. The health care quality account shall be funded by civil money penalties paid by assisted living programs.

C. The Department shall use funds from the health care quality account to improve the quality of care in assisted living programs.

D. Expenditure of funds may include, but is not limited to, the following:

(1) Funding for the establishment and operation of a demonstration project;

(2) A grant award;

(3) Relocation of residents in crisis situations;

(4) Provision of educational programs to assisted living programs, the Office of Health Care Quality, other government, professional, or advocacy agencies, and consumers; and

(5) Any other purpose that will directly improve quality of care.

E. Suggestions for the use of funds may be submitted to the Department from:

(1) Members of the public;

(2) Advocacy organizations;

(3) Government agencies;

(4) Professional organizations including trade associations;

(5) Assisted living programs; and

(6) Assisted living associations.

F. Decision on Expenditure of Funds.

(1) The Department, in its sole discretion, shall decide how to spend funds from the health care quality account.

(2) The Department's decision to spend funds or not to spend funds for a specific project or purpose is not a contested case as defined in State Government Article, §10-202(d), Annotated Code of Maryland, and therefore may not be appealed.

[.62] .57 Emergency Suspension.

A. The Secretary may immediately suspend a license on finding that the public health, safety, or welfare imperatively requires emergency action.

B. The Department shall deliver a written notice to the assisted living program:

(1) Informing the program of the emergency suspension;

(2) Giving the reasons for the action and the regulation or regulations with which the licensee has failed to comply that forms the basis for the emergency suspension; and

(3) Notifying the assisted living program of its right to request a hearing and to be represented by counsel.

C. The filing of a hearing request does not stay the emergency action.

D. When a license is suspended by emergency action:

(1) The assisted living program shall immediately return the license to the Department;

(2) The assisted living program shall stop providing assisted living services immediately;

(3) The [assisted living] manager or alternate manager shall notify the residents or representatives of the residents, or if applicable, the representative of the residents of the suspension and make every reasonable effort to assist them in making other assisted living arrangements; and

(4) The [assisted living manager] or alternate manager shall immediately notify the local department of social services Adult Protective Services Program of the emergency action.

E. In the event of an emergency suspension, the Department may assist in the relocation of residents.

F. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing consistent with [Regulation .64] .59 of this chapter.

G. Show Cause Hearing.

(1) In addition to the right to request a hearing consistent with [Regulation .64] .59 of this chapter, a person aggrieved by the action of the Secretary under this regulation shall be provided

with the opportunity for a hearing to show cause why the Department should lift the summary suspension.

(2) If requested in writing, the show cause hearing shall be held promptly within a reasonable time after the effective date of the order of summary suspension. The time limit for filing an appeal with the Office of Administrative Hearings to obtain an evidentiary hearing shall be followed by the filing of a request for a show cause hearing.

(3) The show cause hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the summary suspension.

(4) The show cause hearing shall be conducted before the Secretary or a designee of the Secretary, who:

(a) Shall determine procedural issues;

(b) May impose reasonable time limits on each party's oral argument; and

(c) Shall make rulings reasonably necessary to facilitate the effective and efficient operation of the show cause hearing.

(5) At the conclusion of the show cause hearing, the Secretary or the Secretary's designee may:

(a) Affirm the order of summary suspension;

(b) Rescind the order of summary suspension;

(c) Enter into a consent order; or

(d) Enter into an interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

(6) After the show cause hearing, if the Secretary or the Secretary's designee decides to continue the summary suspension, the person aggrieved by the decision may request an evidentiary

hearing before the Office of Administrative Hearings *within 30 days after the decision of the Secretary or Secretary's designee is issued*, consistent with [Regulation .64] .59 of this chapter.

H. Hearing.

(1) The Office of Administrative Hearings shall conduct a hearing as provided in [Regulation .64] .59 of this chapter and issue a proposed decision within the time frames set forth in COMAR 28.02.01.

(2) An aggrieved person may file exceptions pursuant to COMAR 10.01.03.

(3) The Secretary shall make a final decision pursuant to COMAR 10.01.03.

(4) If the Secretary's final decision does not uphold the emergency suspension, the assisted living program may resume operation.

[.63] .58 Revocation of License.

A. The Secretary, for cause shown, may notify the assisted living program of the Secretary's decision to revoke the assisted living program's license. The revocation shall be stayed if a hearing is requested.

B. The Department shall notify the assisted living program in writing of the following:

(1) The effective date of the revocation;

(2) The reason for the revocation;

(3) The regulations with which the licensee has failed to comply that form the basis for the revocation;

(4) That the assisted living program is entitled to a hearing if requested, and to be represented by counsel;

- (5) That the assisted living program shall stop providing services on the effective date of the revocation if the assisted living program does not request a hearing;
- (6) That the revocation shall be stayed if a hearing is requested; and
- (7) That the assisted living program is required to surrender its license to the Department if the revocation is upheld.

C. The licensee shall notify the residents, or residents' representatives, and the local department of social services Adult Protective Services Program of any final revocation and make every reasonable effort to assist them in making other assisted living arrangements. The Department may assist in the relocation of residents.

D. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .64 of this chapter.

[.64] .59 Hearings.

A. A request for a hearing shall be filed with the Office of Administrative Hearings, with a copy to the Office of Health Care Quality of the Department, not later than 30 days after receipt of notice of the Secretary's action. The request shall include a copy of the Secretary's action.

B. A hearing requested under this chapter shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 10.01.03 and 28.02.01.

C. The burden of proof is as provided in COMAR 10.01.03.28.

D. Unless otherwise stated in this chapter, the Office of Administrative Hearings shall issue a proposed decision within the time frames set forth in COMAR 28.02.01.

E. The aggrieved person may file exceptions as provided in COMAR 10.01.03.35.

F. A final decision by the Secretary shall be issued in accordance with COMAR 10.01.03.35.