REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF ASSISTED HOUSING PROGRAMS:

Assisted Living Programs

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Assisted Living Programs

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Section 1

Purpose

These rules establish minimum standards for the licensing of assisted living programs. Assisted living services is the provision by an assisted living program, either directly by the provider or indirectly through contracts with persons, entities or agencies, assistance with activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. Assisted living programs must be consumer oriented and meet professional standards of quality.
Section 2

Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend daytime or nighttime programs but do not live in the building.

2.4 “Advance Directives” means a document signed by the consumer, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the consumer, in the event that the consumer becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services that furthers the independence of the consumer and respects their privacy and personal choices, including the choice to continue to reside at home for so long as the assisted living program, as it is fundamentally designed, is able to meet their needs. Assisted living programs provided to consumers must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, building or distinct part of a building that provides care/services in a designated, separated area for consumers with Alzheimer’s disease or other dementia. The unit, building or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by consumers inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the building and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Living Program” means a program of assisted living services provided to consumers in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.8.1 Type I – an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.
2.8.2 Type II – an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies as follows:

2.8.2.1 Services of a Registered Professional Nurse; and/or

2.8.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.

2.9 “Assisted Living Services” means the provision, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted living services defined in any section of 2.9.1 through 2.9.6 plus the addition of 2.9.7 or any section of 2.9.1 through 2.9.6 plus the addition of 2.9.7 and 2.9.8.

2.9.1 Personal supervision, meaning general awareness of a consumer’s general whereabouts, giving consideration to the nature of the living arrangement; and, observation and assessment of each consumer’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities that respond to consumers’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each consumer’s minimum daily food requirements, based on the number of meals served, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a consumer to identify his/her needs and strengths, developing a service plan and arranging for and monitoring service delivery;

2.9.7 Administration of medications, meaning services such as reading labels for consumers, observing consumers taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each consumer;

2.9.8 Nursing services, meaning services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of consumer care services provided by unlicensed health care assistive personnel in assisted living programs.
2.10 “Certified Nursing Assistant (CNA)” means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.11 “Certified Nursing Assistant/Medications (CNA-M)” means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.12 “Consumer” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the assisted living program or building in which the consumer lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a consumer. The Statutory term “resident” has the same meaning as consumer.

2.13 “Consumer’s Service Plan” means a written service plan developed with a consumer, based upon an assessment of the consumer’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.14 “Deficiency” means a violation of State licensing regulations.

2.15 “Dementia” means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

2.16 “Department” means the Maine Department of Health and Human Services.

2.17 “Directed Plan of Correction” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 “Distinct Part” means a physically separate unit that is clearly identifiable from the remainder of the building. Various apartments or beds scattered throughout the building would not comprise a “distinct part”. The “distinct part” of a building provides a level of service distinguishable from other levels of care in the building.

2.19 “Duly Authorized Licensed Practitioner” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
2.20 “Emergency” means either those events that demonstrate that a consumer has an urgent medical or psychological need that requires immediate acute care treatment or poses imminent danger to other consumers. Emergency also means a natural disaster that damages or interrupts vital services to consumers or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

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

2.28 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the assisted living provider with documentation of their legal authority.

2.29 “Licensee” means the person to whom a license is issued.

2.30 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.
2.31 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of consumer, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.32 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.33 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.34 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.35 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.36 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.37 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.38 “Provider” means the licensee.

2.39 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.40 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.41 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.42 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.

2.43 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.44 “Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.

2.45 “Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the assisted living program or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident. The Statutory term “resident” has the same meaning as consumer.
2.46 **"Consumer Rights"** means those rights enumerated in Title 22 M.R.S.A. §7921 *et seq.*, 22 M.R.S.A. §7853(6), which apply to assisted housing programs, and Section 5 of these regulations.

2.47 **"Restraints"** means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.47.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.47.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

2.48 **“Self-Administration of Medication”** means a consumer takes his/her own medication(s) independent of a staff person preparing the medication for the individual.

2.49 **“Shared Staffing”** as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.50 **“Statement of Deficiencies (hereinafter SOD)”** means a document issued by the Department which describes deficiencies in complying with these regulations.

2.51 **“Submit”** means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department.

2.52 **“Tenancy Obligation”** means a house rule that does not conflict with these regulations, which is established by the licensee and included in the contract, that all consumers must adhere to in order to continue their residence.

2.53 **“Unlicensed Health Care Assistive Personnel”** means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.54 **“Working Days”** means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 **Responsibility for compliance.** The applicant/licensee shall comply with these regulations.

3.2 **Unlicensed assisted living program.** No person, firm, partnership, association, corporation or other entity shall manage or operate an assisted living program without a license.

3.3 **Person license issued to.** The license is only valid for the named licensee(s).

3.4 **Application and licensure.**

3.4.1 **Application required.** The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications, on which no action has been taken by the applicant after sixty (60) calendar days, shall be void.

3.4.2 A non-refundable licensing fee of $200 shall be submitted with the application for each assisted living program. The check shall be made payable to the Treasurer, State of Maine.

3.4.3 Annually thereafter a licensee fee of $200 is required.

3.4.4 **Admission and scope of services policy.** Assisted Living Programs are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.

3.4.5 **Additional licensing requirements.** Prior to the issuance of a license and prior to relicensure, the assisted living program shall:

3.4.5.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code. Assisted living programs must be inspected using the section of the Life Safety Code that applies to new apartment buildings and must be protected throughout by a supervised, automatic sprinkler system approved by the Commissioner of Public Safety.

3.4.5.2 Comply with all applicable laws and regulations promulgated there under, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III).

3.4.5.3 Comply with all other applicable laws and regulations pertaining to licensing.

3.5 **Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with consumer funds in an amount sufficient to replace those funds in the event of loss.

3.6 **Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the assisted living program may serve as guardian, conservator or power of attorney of any consumer, but may be a representative payee or manager of personal funds.
3.7 **Issuance of license.** A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the applicant, the name of the program, the type of program, the name of the administrator, the address of the premises where the program is located, the maximum number of units, the type of license, and the expiration date of the license.

3.8 **Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

3.9 **Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program; and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.

The department will specify the number of apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 **Adult day services programs.** When an adult day services program is physically located in an assisted living program, separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Assisted Housing Programs* and licensed capacity will be reflected on the license.

3.11 **Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted living programs that are located on the same contiguous grounds with licensed nursing facilities; adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 **Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the program for which the application is made or is licensed and has not operated the program during the term of that license;
3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once consumers are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.

3.13 **Conditional license.** The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.

3.14 **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the assisted living program is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of consumers.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of an assisted living program, that the department knows or believes, is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for an assisted living program license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.
3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.

3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

- 3.20.1 Issuance of a conditional license;
- 3.20.2 Refusal to issue or renew a license;
- 3.20.3 Revocation or suspension of a license; or
- 3.20.4 Refusal to issue a provisional license.

3.21 **Renewal.** A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

- 3.21.1 Verify any information in the renewal application and conduct an inspection of the program;
- 3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 **Actions requiring prior written approval.** When an alteration of the common dining room and public bathrooms are proposed, consumers may not use these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 **Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate consumer rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 **Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the department. See also Section 4.10 of these regulations.

3.25 **Rates and contracts.**

- 3.25.1 **Rates.** Assisted living programs shall list all standard charges and make them available to the public.
- 3.25.2 **Signing a contract.** Each provider and each consumer or someone authorized to act on the consumer’s behalf, shall sign a standard contract issued by the department,
attached as Appendix A, at the time of any modification of an existing contract and
with all new admissions. The consumer and/or consumer’s legal representative shall
be given an original of the signed contract and the provider shall keep a duplicate in
the consumer’s file. No one other than the consumer shall incur any responsibility for
the consumer’s obligations by signing the contract for admission of the consumer.
Financial responsibility for the consumer’s expenses can only be assumed according to
Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain provisions regarding services and
accommodations to be provided and the rates and charges for such and any other
related charges not covered by the program’s basic rate. The contract may contain
additional provisions, as addenda, that do not conflict with these regulations. The
provider may supplement but not replace the standard provisions, as long as they are
consistent with the applicable assisted living program rules. Each contract is subject to
the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a consumer
which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser
standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar days notice
prior to any changes in rates, responsibilities, services to be provided or
any other items included in the contract. The thirty (30) day notice will
not be required if it is the resident, or the resident’s legal representative,
who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment,
except one month’s rent in an assisted living program which may be
used as a security deposit. The contract must state the explicit return
policy of the program with regard to the security deposit.

3.25.3.5 No contract may contain a provision which provides for the payment of
attorney fees or any other cost of collecting payments from the
consumer.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;

3.25.3.6.2 Tenancy obligations, if they exist;

3.25.3.6.3 Consumer rights; and

3.25.3.6.4 Copy of the admissions policy.

3.25.3.7 The contract signed for admission of the consumer may not require or
encourage anyone other than the consumer to obligate himself/herself for
the payment of the consumer’s expenses. If anyone other than the consumer
informs the assisted living program that he/she wishes to guarantee
payment of the consumer’s expenses, he/she can do so only in a separate
written agreement. No provision in the separate written agreement can
conflict with these rules. This separate agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the consumer’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the assisted living program that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to consumers. The licensee must provide an information packet that includes the following information to the consumer and/or consumer’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current consumers who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of assisted living program and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;

3.26.5 The process and criteria for placement in, or transfer or discharge from, the assisted living program; and

3.26.6 The assisted living program’s staff qualifications.

3.27 Information for residents of Alzheimer’s/dementia units. When a provider operates a unit meeting the requirements of a Designated Alzheimer’s/Dementia Care Unit as all or part of its program, consumers and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for consumer assessment and establishment of a consumer services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

3.27.5 A description of family involvement and the availability of family support programs;

3.27.6 A description of security measures provided;
3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of consumers to and from the program/unit.

3.28 **Refunds.** Refunds are to be managed as follows:

3.28.1 If a consumer dies or is discharged, the provider shall issue a refund to the consumer, the consumer’s legal representative or the consumer’s estate for any advance payments on a pro-rated basis. The refund will be calculated from the time the unit is surrendered to the licensee or 15 days from the date of written notice (in a non-emergency situation), whichever is later.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a consumer is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.

3.29 **Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted living program use the personal funds of any consumer for the operating costs of the assisted living program or for items that are part of the contractual payment. The personal funds of any consumer shall not be commingled with the business funds of the assisted living program or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the assisted living program. No operator or agent of the assisted living program shall borrow money from any consumer. *(Class IV)*

3.30 **Tenancy obligation.** Tenancy obligations, if they exist in the assisted living program, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

3.31 **Administrative and consumer records.**

3.31.1 **Confidentiality.** All administrative and consumer records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 **Location of records.** All consumer records, consumer finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 **Inspection of records.** All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the consumer or his/her legal representative.

3.31.4 **Record retention.** All administrative and consumer records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the consumer.

3.31.5 **Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.
3.31.6 **Disaster plan.** Each assisted living program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If an assisted living program has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 **Confidential information.** Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 **Inspections required.** The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview consumers and employees in private. [Class I]

4.2 **Frequency and type of inspections.** An inspection may occur:

4.2.1 Prior to the issuance of a license;

4.2.2 Prior to renewal of a license;

4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;

4.2.4 When there has been a change or proposed change in administrator, physical plant or services;

4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;

4.2.6 For routine monitoring of services; or

4.2.7 Any time the department has probable cause to believe that an assisted living program has violated a provision of these regulations or is operating without a license.

4.3 **Licensing records kept by the department.** The department will maintain a complete record of all licensing activities related to the assisted living program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 **Complaints.** The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any consumer or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted living program in writing.

4.5 **Enforcement process.**

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.

4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.

4.5.3 Failure to correct any deficiency (ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.
4.5.4 **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of the Division of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program without a license;

4.6.2 Operation of an assisted living program over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted living programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.

4.7 **Intermediate sanctions.** The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the consumers of an assisted living program or the general public:

4.7.1 The assisted living program may be directed to stop all new admissions, regardless of payment source, or to admit only those consumers the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.

4.8 **Financial penalties.**

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:
4.8.2.1 Class I. - Any failure to comply with a regulation where that failure poses an immediate threat of death to a consumer(s).

4.8.2.2 Class II. - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a consumer(s).

4.8.2.3 Class III. - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a consumer(s).

4.8.2.4 Class IV. - The occurrence of a repeated deficiency that infringes upon consumer rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the assisted living program, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.

4.8.5 The amount of any penalty to be imposed shall be calculated according to the following classification system:

4.8.5.1 Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; Operation of an assisted living program or residential care facility over licensed capacity, or Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.

$6.00 per consumer per occurrence per day

4.8.5.2 Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; Failure to submit a POC within ten (10) working day’s after receipt of an SOD; or Failure to take timely corrective action in accordance

$5.00 per consumer per occurrence per day
with a POC, Directed POC or conditional license.

4.8.5.3 The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3; $4.00 per consumer per occurrence per day

The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.

4.8.6 The department may impose a financial penalty on a licensee of an assisted living program for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a licensee of an assisted living program may not be greater than a sum equal to $10 times the total number of consumers served by the assisted living program per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of an assisted living program.

4.8.7 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

4.8.7.1 In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to consumers.

4.8.7.2 In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to consumers.

4.8.7.3 The department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program.

4.9.2 If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license has been issued.
4.9.3 Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program, the department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184, subsection 6.

4.9.4 Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program, or conduct or practices detrimental to the welfare of persons living in or attending the assisted living program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375 §10051.

4.9.5 Pursuant to Title 22 M.R.S.A. Chapter 1666-A §7931 et seq., the department may petition the Superior Court to appoint a receiver to operate the assisted living program in the following circumstances:

4.9.5.1 When the assisted living program intends to close, but has not arranged for the orderly transfer of its consumers at least thirty (30) calendar days prior to closure;

4.9.5.2 When an emergency exists which threatens the health, security or welfare of consumers or

4.9.5.3 When the assisted living program is in substantial or habitual violation of the standards of health, safety or consumer care established under State or Federal laws and regulations, to the detriment of the welfare of the consumers.

4.10 Appeal rights. Any assisted living program aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearing Regulations. A request for a hearing must be made, in writing, to the Assistant Director of the Division of Licensing and Regulatory Services, Community Services Programs, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.1 Issue a conditional license;

4.10.2 Amend or modify a license;

4.10.3 Void a conditional license;

4.10.4 Refuse to issue or renew a full license;

4.10.5 Refuse to issue a provisional license;

4.10.6 Stop or limit admissions;

4.10.7 Issue a directed POC;
4.10.8 Affirm or modify an Assessment of Penalties after an informal review;

4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or

4.10.10 Deny a request for a waiver of a rule.

4.11 Operating without a license

4.11.1 License required. A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate an assisted living program.

4.11.2 Civil penalty for operating without a license. A person, firm, partnership, association, corporation or other entity who operates an assisted living program without a license commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

4.11.3 Injunctive relief. Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.11.

4.11.4 Enforcement. The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.11.

4.11.5 Jurisdiction. The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.11.

4.11.6 Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.11 occurred.

4.11.7 Right of entry. To inspect the premises of an assisted living program that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.11.8 Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed assisted living program with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.11. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department’s right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.11.9 Noninterference. An owner or person in charge of an unlicensed assisted living program may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

4.11.10 Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.11 shall pay to the
State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.11.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.11, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

4.11.10.2 In an action under section 4.11, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

Consumer Rights

5.1 **Consumer rights.** The assisted living program shall promote and encourage consumers to exercise their rights, to age in place and make informed choices.  *[Class IV]*

5.2 **Freedom of choice of provider.** For services and supplies not provided by the licensee, each consumer has the right to select the provider of his/her choice.  *[Class IV]*

5.3 **Rights regarding transfer and discharge.** Each consumer has the right to continued residence whenever a valid contract for services is in force. The assisted living program must show documented evidence of strategies used to prevent involuntary transfers or discharges. A consumer shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a consumer has violated the admission contract obligations, despite reasonable attempts at problem resolution;  *[Class IV]*

5.3.2 A consumer’s continued tenancy constitutes a direct threat to the health or safety of others;  *[Class IV]*

5.3.3 A consumer’s intentional behavior has resulted in substantial physical damage to the property of the assisted living program or others residing in or working there;  *[Class IV]*

5.3.4 A consumer has not paid for his/her services in accordance with the contract between the assisted living program and the consumer;  *[Class IV]*

5.3.5 When there is documented evidence that the assisted living program cannot meet the needs of the consumer as the program is fundamentally designed;  *[Class IV]* or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered.  *[Class IV]*

5.4 **Transfer or discharge.** When a consumer is transferred or discharged in a non-emergency situation, the consumer or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a consumer to a new placement.  *[Class IV]* Each notice must be written and include the following:

5.4.1 The reason for the transfer or discharge, including events which are the basis for such action;  *[Class IV]*

5.4.2 The effective date of the transfer or discharge;  *[Class IV]*
5.4.3 Notice of the consumer’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of consumers with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)); [Class IV]

5.4.6 The consumer’s right to be represented by himself/herself or by legal counsel, a relative, friend, or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the consumer and/or consumer’s representative. The assisted living program shall assist the consumer and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a consumer is away, and continues to pay for services in accordance with the contract, the consumer shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the consumer or consumer’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Consumers who choose to relocate shall be offered assistance in doing so.

5.7.1 Assisted living programs may require up to a fifteen (15) calendar day notice for consumers choosing to relocate in order to obtain a refund. For those consumers who relocate for emergency medical treatment no advance notice is required to obtain a refund.

5.7.2 The assisted living program shall offer information to the consumer, as appropriate, regarding potential risks that may be inherent in the discharge plan and information that will support the consumer’s adjustment to his/her next setting. [Class IV]

5.8 Right to communicate grievances and recommend changes. The assisted living program shall assist and encourage consumers to exercise their rights as consumers and citizens. Consumers may freely communicate grievances and recommend changes in policies and services to the assisted living program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The consumer has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations list advocacy services which may be available to consumers. Assisted living programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify consumers upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. [Class IV]
5.8.1 Consumers who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the consumer can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 **Right to manage financial affairs.** Consumers shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the consumer. [Class IV]

5.10 **Right to freedom from abuse, neglect or exploitation.** Consumers shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 **Rights regarding restraints and aversive conditioning.** There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]

5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation and the Regulations Governing the Use of Restraints in Community Settings. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as Department of Behavioral and Developmental Services) [Class I, II, III, IV]

5.11.3 For any consumer who is a client of the Department of Health and Human Services Adult Mental Health Program (formerly known as Behavioral and Development Services) due to his/her mental illness, the assisted living program shall comply with the Rights of Recipients of Mental Health Services, promulgated and enforced by the Department of Health and Human Services (formerly known as Department of Behavioral and Developmental Services) [Class I, II, III, IV]
5.12 Right to confidentiality. Consumers’ records and information pertaining to their personal, medical and mental health status is confidential. Consumers and their legal representatives shall have access to all records pertaining to the consumer at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Consumers and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each consumer only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the consumer or his/her legal representative shall be required for release of information to any other person except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from the assisted living program, except as may be necessary to carry out these regulations. Upon admission, each consumer shall sign and date a written consent which lists individuals, groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, children, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 Right to refuse to perform services for the assisted living program. Consumers may refuse to perform services for the assisted living program. [Class IV]

5.14 Right to privacy and consideration. Consumers shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]

5.15 Right to communicate privately with persons of choice. Consumers may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Consumers shall have privacy when having telephone conversations. [Class IV]

5.16 Right to participate in activities of choice. Consumers may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 Right to personal clothing and possessions. Consumers may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other consumers or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 Couples. A couple residing in an assisted living program has the right to share a unit. [Class IV]

5.19 Right to be informed of services provided by the facility/program. Consumers shall be fully informed of items or services which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 Right to refuse treatment or services. Consumers may choose to refuse medications, treatments or services. If the consumer refuses necessary care or treatment, the provider shall make reasonable efforts to consult the consumer’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage consumers to receive necessary services. No person without legal authority to do so shall order treatment which has not been consented to by a competent consumer. [Class IV]
5.21 **Right to be free from discrimination.** A consumer shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 **Right to information regarding deficiencies.** Consumers have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform consumers or their legal representatives that the survey results are public information and are available in a common area of the building. Consumers and their legal representatives shall be notified by the provider of any actions proposed or taken against the license of the assisted living program by the Department, including but not limited to, Directed Plans of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]

5.23 **Notification of Residents Rights.** The provider shall inform each consumer and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each consumer and legal representative, within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the change. The provider must accommodate for any communication barriers that may exist, to ensure that each consumer is fully informed of his/her rights. [Class IV]

5.24 **Bill of rights for persons with mental retardation.** Programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

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

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

Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained at the assisted living program that a report has been made.

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

5.26 **Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to reside in an assisted living program, the licensee shall:
5.26.1 Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. Neither the provider nor the property owner, if a separate entity, is required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]

5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the building. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 Right of action. In addition to any remedies contained herein, any consumer whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 Right to appeal an involuntary transfer or discharge. The consumer has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A consumer may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the consumer must submit the appeal within five (5) calendar days of receipt of a written notice. If the consumer has already been discharged on an emergency basis, the provider shall hold a space available for the consumer pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director of the Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the consumer at the administrative hearing. [Class IV]

5.29 Consumer adjudicated incompetent. In the case of a consumer adjudicated incompetent, the rights of the consumer are exercised by the consumer’s legal representative, as defined in Section 2.28 of these Regulations. [Class IV]

5.30 Consumer councils

5.30.1 Consumers have the right to establish a consumer council, pursuant to Title 22 M.R.S.A. §7923. Consumers and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each consumer and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the consumers choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:
5.30.3.1 To be provided with a copy of the program’s policies and procedures relating to consumer rights and to make recommendations to the administrator on how they may be improved; [Class IV]

5.30.3.2 To establish procedures that will ensure that all consumers are informed about and understand their rights; [Class IV]

5.30.3.3 To elicit and disseminate information regarding programs and to make recommendations for improvement; [Class IV]

5.30.3.4 To help identify consumer problems and recommend ways to ensure early resolution; [Class IV]

5.30.3.5 To inform the administrator of the opinions and concerns of the consumers; [Class IV]

5.30.3.6 To find ways of involving the families and consumers of the assisted living program; [Class IV]

5.30.3.7 To notify the Department and The Long Term Care Ombudsman Program when the council is constituted; and [Class IV]

5.30.3.8 To disseminate records of council meetings and decisions to the consumers and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. [Class IV]

5.31 Right to a service plan. The provider shall assist consumers to implement any reasonable plan of service developed with community or state agencies. [Class IV]
Section 6

Alzheimer's/Dementia Unit Standards

6.1 Alzheimer's/Dementia Care Units. A building or unit may be designated as an Alzheimer's/Dementia Care Unit if the following regulations are met and the assisted living program has received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer's/Dementia unit, the consumer’s individual record must contain:

6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or assisted living program relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician’s diagnosis of Alzheimer's disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate consumers with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to any physical plant standards required for the licensure, an Alzheimer's/dementia care unit shall have;

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 Secured outdoor space and walkways, which allow consumers to ambulate but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in consumer use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the consumer should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;

6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and

6.3.1.6 A staff work area for charting and storage of consumer records, and a communication system such as a telephone or two-way voice actuated call system.
6.3.2 Physical environment. The designated Alzheimer’s/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the consumers between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual consumers;

6.3.2.3 Label or inventory all consumer possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage consumers to decorate and furnish their units with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify consumer’s units as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimer’s/dementia care unit shall have policies and procedures regarding consumers who may wander. The procedures shall include actions to be taken in case a consumer elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the assisted living program, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.

6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a consumer and the exit.
6.4 **Therapeutic activities for Alzheimer’s/Dementia Care Units.** All facilities with Alzheimer’s/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.4.3 Social activities (e.g., games, music, reminiscing, etc.);

6.4.4 Crafts (e.g., decorations, pictures, etc.);

6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.4.7 Spiritual activities.

6.5 **Pre-service training for Alzheimer’s/Dementia Care Units.** For pre-service training, all facilities with Alzheimer’s/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer’s disease and other dementias. In addition to the usual assisted living program orientation, which shall cover such topics as consumer rights, confidentiality, emergency procedures, infection control, assisted living program philosophy related to Alzheimer’s Disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer’s Disease and related dementias;

6.5.2 Communication basics;

6.5.3 Creating a therapeutic environment;

6.5.4 Activity focused care;

6.5.5 Dealing with difficult behaviors; and

6.5.6 Family issues.
Section 7

Medications and Treatments

7.1 **Use of safe and acceptable procedures.** The administrator shall ensure that all persons administering medications and treatments (except consumers who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [*Classes I/II/III*]

7.1.1 Consumers shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [*Classes I/II/III*]

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4 Unlicensed assistive personnel must be trained by a registered professional nurse in regard to the management of persons with diabetes. The registered professional nurse must provide in-service training and documentation to include: [*Class III*].

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation including signs/symptoms;

7.1.4.6 Treatment and prevention of insulin reaction;

7.1.4.7 Foot care;

7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and

7.1.4.9 Standard Precautions.

Documentation of training shall be included in the employee record.
7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.1.6 For those residents for whom the facility is responsible for assistance with medication administration, no medications, including those brought into the assisted living program by the consumer, family or friends, shall be administered or discontinued without a written order signed by a duly authorized licensed practitioner or other person licensed to prescribe medications. [Class III]

7.1.7 Orders for medications and associated treatments shall be in writing, signed and dated by a duly authorized licensed practitioner and shall be in effect for the time specified by the duly authorized licensed practitioner, but in no case to exceed twelve (12) months, unless there is a written reordering. Orders for psychotropic medications shall be reissued every three (3) months, unless otherwise indicated by the duly authorized licensed practitioner. Standing orders for individual consumers are acceptable when signed and dated by the duly authorized licensed practitioner.

7.1.7.1 Upon admission to another facility, all existing orders are no longer in effect. Upon return to the facility, all orders must be reviewed and approved by the resident’s duly authorized licensed practitioner within 72 hours. During that timeframe, orders that are signed and dated by the discharging duly authorized licensed practitioner are the current acceptable orders. Prior to admission to another facility all medications must be removed from service and placed in a locked area in accordance with Section 7.7.

7.2 Administration of medications.

7.2.1 Self-administration. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the consumer/legal representative elects (in writing) to have the assisted living program administer his/her medications. A final decision will be reached between the consumer, his/her legal representative, his/her duly authorized licensed practitioner, and a facility representative.

7.2.2 Medications administered by assisted living program. For those medications for which the assisted living program is responsible, the following apply:

7.2.2.1 Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Written dated orders for telephone orders must be signed by the duly authorized licensed practitioner within five (5) working days. [Class III]

7.2.2.2 Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy regulations.
7.2.3 **Unlicensed assistive personnel.** Unlicensed assistive personnel administering medications and/or treatments must successfully complete training approved by the Department. There shall be evidence available in the assisted living program that such training has been successfully completed. Whenever the standards or guidelines of the medication administration course are substantially revised, unlicensed personnel must be re-certified within one (1) year of the revision, by a method approved by the Department. An additional exception will be made on a case-by-case basis for persons who only administer dietary supplements and/or minor medicated treatments, shampoos, lotions and creams that could be obtained over the counter without a physician’s order.

A person qualified to administer medications must be on site at the assisted living program whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

All unlicensed assistive personnel administering medications and/or treatments must complete a Department-approved eight (8) hour refresher course biennially for re-certification within two (2) years of the original certification. [Class III]

7.2.4 **PRN Medications**

7.2.4.1 **PRN Psychotropic medications.** Psychotropic medications ordered “as needed” by the duly authorized licensed practitioner, shall not be administered unless the duly authorized licensed practitioner has provided detailed behavior-specific written instructions, including symptoms that might require use of medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a twenty-four (24) hour period. Assisted living program staff shall notify the duly authorized licensed practitioner within twenty-four (24) hours when such a medication has been administered, unless otherwise instructed in writing by the duly authorized licensed practitioner.

7.2.4.2 A person qualified to administer medications must be on site at the assisted living program whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

In no event, however, shall antipsychotic-type psychotropic medications be prescribed on a PRN basis only, having no routinely scheduled and administered doses.

7.3 **Medication storage.**

7.3.1 Consumers who self-administer medications and who handle their own medical regime may keep medications in their own apartment. [Class III]

7.3.2 Medications administered by the assisted living program shall be kept in their original containers in a locked storage cabinet. The cabinet shall be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each consumer’s medications. It shall be locked when not in use and the key carried by the person on duty in charge of medication administration. [Class III]
7.3.3 Medications/treatments administered by the assisted living program for external use only shall be kept separate from any medications to be taken internally. [Class III]

7.3.4 Medications administered by the assisted living program which require refrigeration shall be kept safely stored and separate from food by placement in a special tray or container, except vaccines, which must be stored in a separate refrigeration unit that is not used to store food. Refrigeration shall not exceed forty-one (41) degrees Fahrenheit. A thermometer shall be used to ensure proper refrigeration. [Class III]

7.4 Temporary absences. When a temporary absence from the assisted living program is expected to be greater than seventy-two (72) hours, medications leaving the assisted living program (except those by consumers who self-administer) must be in a form packaged and labeled by a pharmacist. For medications leaving the assisted living program for seventy-two (72) hours or less, the medication shall be packaged in such a way as to facilitate self-administration or administration by a responsible party of the correct medication at the appropriate time. Properly certified or licensed staff will use acceptable methods and procedures for preparing medications for leaving the assisted living program. Staff will follow the same policies used in the assisted living program for administering medications. The name of the consumer and the name and strength of each drug, as well as the directions from the original prescription package, should be conveyed to the consumer or their responsible party along with all cautionary information in writing, either directly on an envelope containing the appropriate dose or on a separate instruction sheet. If the medication is sent in original containers, pills must be counted and documented upon leaving and returning to the assisted living program. [Class III]

7.5 Medication labeling. For medications administered by the assisted living program, each prescription dispensed by a pharmacy shall be clearly labeled in compliance with requirements of the Commission on Pharmacy and shall include at least the following:

7.5.1 Prescription number;
7.5.2 Consumer’s full name;
7.5.3 Name, strength and dosage of the drug;
7.5.4 Directions for use;
7.5.5 Name of prescribing duly authorized licensed practitioner;
7.5.6 Name and address of issuing pharmacy;
7.5.7 Date of issue of latest refill;
7.5.8 Expiration date; and
7.5.9 Appropriate accessory and cautionary instructions.
7.6 Improperly labeled medications. For medications administered by the assisted living program, all pharmaceutical containers having soiled, damaged, incomplete, incorrect, illegible or makeshift labels shall be returned to the original dispensing pharmacy for re-labeling within two (2) working days or shall be disposed of in accordance with the requirements contained in Section 7.9. [Class III]

7.7 Expired and discontinued medications. For medications administered by the assisted living program, medications shall be removed from use and properly destroyed after the expiration date and when discontinued according to procedures contained in Section 7.9. They shall be taken out of service and locked separately from other medications until reordered or destroyed. [Class III]

7.8 Medication owned by consumers. Prescribed medicines are the property of the consumer and shall not be given to or taken by other consumers or any other person.

7.9 Destroying medications. For medications administered by the assisted living program, all discontinued medications, expired medications or medications prescribed for a deceased consumer, except controlled substances and individual doses, shall be destroyed by the administrator or the administrator’s designee and witnessed by one (1) competent person who is not a consumer. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the pharmacist and a credit or rebate made to the person(s) who originally paid for the medication. Amounts destroyed or returned shall be recorded on the consumer’s record, with the signature of the administrator or the administrator’s designee and witness(es). Destruction or return to the pharmacy shall take place within thirty (30) calendar days of expiration or discontinuation of a medication or following the death of the consumer.

7.10 Schedule II controlled substances. All Schedule II controlled substances administered by the assisted living program, listed in the Comprehensive Drug Abuse Act of 1970, Public Law 91-513, Section 202 and as amended pursuant to Section 202 are subject to the following standards. [Class II]

7.10.1 For all Schedule II controlled substances, there shall be an individual record in which shall be recorded the name of the consumer, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand. [Class II]

7.10.2 There shall be a recorded and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the assisted living program that day. [Class II]

7.10.3 All Schedule II controlled substances on hand shall be counted at least weekly and records kept of the inventory in a bound book with numbered pages, from which no pages shall be removed. [Class II]

7.10.4 All Schedule II controlled substances shall be stored under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall. [Class II]

7.10.5 All excess and undesired Schedule II controlled substances in the possession of a licensed assisted living program that are no longer required for a consumer, shall be disposed of in the following manner. The Administrator or a licensed or registered nurse shall list all such unused substances and keep the same in a securely locked area apart from all other drugs. Disposal shall be in the form of incineration or flushing into the sewage system only in the presence of an authorized representative of the Department, a licensed pharmacist, a member of the Commission on Pharmacy or an authorized representative of
the Drug Enforcement Agency. At least one (1) of the persons must be a person who did not dispense the drug or who was the last person to inventory the drug. Documentation of such destruction shall be made on the consumer’s record and in the inventory record required in Section 7.10.3, signed by the individual authorized to dispose of the drug. [Class II]

7.11 **Bulk supplies.** Assisted Living Programs may, but are not required to, stock in bulk supply those items regularly available without prescription at a pharmacy.

7.12 **Medication/treatment administration records** for medications administered by the assisted living program,

7.12.1 Individual medication/treatment administration records shall be maintained for each consumer and shall include all treatments and medications ordered by the duly authorized licensed practitioner. The name of the medication, dosage, route and time to be given shall be recorded in the medication/treatment administration record. Documentation of treatments ordered and time to be done shall be maintained in the same manner. These rules apply only to treatments ordered by licensed health care professionals. [Class III]

7.12.2 Whenever a medication or treatment is started, given, refused or discontinued, including those ordered to be administered as needed (PRN), the medication or treatment shall be documented on the medication/treatment administration record. It shall be initialed by the administering individual, with the full signature of the individual written somewhere on such record. A medication or treatment shall not be discontinued without evidence of a stop order signed and dated by the duly authorized licensed practitioner. [Class III]

7.12.3 Medication errors and reactions shall be recorded in an incident report in the consumer’s record. Medication errors include errors of omission, as well as errors of commission. Errors in documentation or charting are errors of omission. [Class II]

7.12.4 Administration of medications ordered as needed (PRN) shall be documented and shall include date, time given, medication and dosage, route, reason given, results or response and initials or signature of administering individual. Treatments ordered PRN shall be documented in the same manner.

7.13 **Medication containers.** Graduated medicine containers, for the accurate measurement of liquid medications, shall be used. If not disposable, medicine containers shall be returned to the dishwashing unit for sanitization after each use. Only sterile disposable syringes and needles shall be used for insulin injection. Disposable medicine containers shall not be reused. [Class III]

7.14 **Breathing apparatus.** When the assisted living program assists a consumer with a hand-held bronchodilator, metered dose nebulizers, intermittent positive pressure breathing machine or oxygen machine, there shall be documentation of the following:
7.14.1 The names of staff who are qualified or trained to use the equipment and/or to mix medications, the nature of their training, the date and who provided it;

7.14.2 The name of the distributing agency and the frequency and specific directions for cleaning the equipment; and

7.14.3 The consumer’s record shall contain a copy of the duly authorized licensed practitioner’s order, possible side effects to be monitored, specific instructions as to when the duly authorized licensed practitioner must be notified regarding side effects and instructions to the consumer on the use of the breathing apparatus.

7.15 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or use of medical equipment not specifically outlined in these regulations there must be documentation for the employee file.
Section 8

Verification of Credentials

8.1 Licensed Staff. Prior to employing licensed staff, the assisted living program must verify that the person has a valid and current license.

8.2 Employing CNA’s and CNA-M’s. Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the assisted living program must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/consumer funds in a health care setting, or if the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.

8.3 Prohibited Employment. The facility may not hire as unlicensed assistive personnel as defined in section 2.53 an individual who is prohibited from employment as a certified nursing assistant as outlined below and in section 8.4:

8.3.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.3.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.3.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.3.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants.

8.4 Time Limit on Consideration of Prior Criminal Conviction: Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

8.4.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;
8.4.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.5 Exception: The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.

8.6 Notification: A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Scope of Licenses

9.1 Change in level of services. No Assisted Living Program may provide services in excess of those permitted by its license. When a licensed Type 1 Assisted Living Program applies to be licensed as a Type 2 program that provides nursing services, a modified application process is used. The provider must contact the Department in writing and provide such additional information as may be requested in order to assess the provider’s capacity to deliver nursing services under a Type 2 license.
Section 10

Consumer Records

10.1 Individual records required. For each consumer receiving assisted living services, the program must develop and maintain individual records that include, but are not limited to, the following:

10.1.1 Name, address, mailing address (if different) and telephone number;

10.1.2 Name, address and telephone number of a person to contact in an emergency;

10.1.3 A functional assessment and reassessments;

10.1.4 A service plan;

10.1.5 A dated release of information authorization; and

10.1.6 Documented proof of legal representation.

10.2 Assessments and reassessments.

10.2.1 A functional assessment must be completed within thirty (30) calendar days for a consumer receiving assisted living services. The assessment must include a review of the consumer’s need for assistance with ADLs, IADLs, medication administration and nursing service. The document shall contain the date of the assessment and the signature of the assessor.

10.2.2 Reassessments shall be done at least every six (6) months thereafter, indicating the date of the reassessment and the signature of the assessor.

10.3 Service plans. A service plan shall be signed by the consumer or his/her legal representative. The plan authorizes the program to arrange for or to provide services. The service plan must be reviewed and revised as appropriate, but at least every six (6) months, unless changes occur. The plan must describe:

10.3.1 What services will be provided;

10.3.2 The desired outcome;

10.3.3 Who will provide the services;

10.3.4 When and how often assistance will be provided; and

10.3.5 When the service will begin.

10.4 Release of information. A dated release of information authorization shall be on a form approved by the Department, and signed by the consumer. The release of information authorization must:
10.4.1 Be in language the consumer can understand;

10.4.2 State whether or not the consumer gives permission for information to be disclosed and if permission is given, the authorization must contain:

10.4.2.1 Names of the agencies or people who are authorized to disclose information;

10.4.2.2 A description of the type of information that may be disclosed;

10.4.2.3 Names of the people or agencies to whom information may be disclosed;

10.4.2.4 The date the authorization will expire; and

10.4.2.5 A statement that the consumer can revoke or change the release at any time.

10.5 Progress notes. Signed and dated progress notes shall be completed at least monthly on implementation of the service plan and/or any significant changes in the consumer’s functioning.

10.6 Incident documentation. For any consumer who has sustained an injury, who has a medication reaction or when an error is made in the documentation or administration of medication, a report shall be completed. The report shall describe the incident and indicate the extent of the injury or reaction and necessary treatment. It shall be filed in the consumer’s record.
Section 11

Qualifications, Training and Responsibilities

11.1 Operating standards. The licensee shall operate in compliance with all applicable laws and regulations, consistent with the standard of conduct that a reasonable and prudent person would observe in the same situation.

11.2 Minimum age. The chief executive officer of the licensee shall be at least twenty-one (21) years of age.

11.3 Criteria. The licensee and administrator shall demonstrate their willingness and ability to operate and manage the assisted living program with regard for the best interests of consumers. In making this determination, the Department shall consider each of the following factors to the extent that they are relevant to the proposed program, ownership interest and/or employment:

   11.3.1 Record and reputation for honest and lawful conduct in business and personal situations. The provider shall, as part of the license application and renewal process, authorize the Department to review the records of professional licensing boards or registers and any criminal record, child protective record or adult protective record necessary to determine compliance with these rules.

   11.3.2 Financial viability, including but not limited to, a history of timely payment of employee federal withholding taxes, a good credit rating from an appropriate agency and/or financial institution, capability of obtaining financing for working capital.

11.4 Training for Assisted Living Provider. The licensee shall attend any training sessions that the Department determines are necessary to meet licensing standards.

11.5 Administrator. There shall be an administrator who holds a current professional license related to residential care, assisted living programs or health care, or have a combination of five (5) years of education or experience in the health care field, including financial management and staff supervision. In addition, the administrator must meet the following qualifications:

   11.5.1 The administrator shall be at least twenty-one (21) years of age.

   11.5.2 The administrator shall have management and supervisory experience, including the capacity to manage the financial operations and staff of the assisted living program for which the license is sought.

   11.5.3 The administrator shall have experience in the field of health care, social services or areas related to the provision of assisted living services.

   11.5.4 The administrator shall demonstrate conduct which shows an understanding of, and compliance with, consumers’ rights.
11.5.5 The administrator shall provide information which relates to the ability and willingness to comply with all applicable laws and regulations.

11.5.6 The administrator shall provide any information reasonably related to the ability to provide safe and appropriate services at the level of care for which the license is sought.

11.6 Administrator training. The Administrator shall attend any training sessions which the Department determines to be mandatory.

11.7 Direct Services staff. No person under the age of eighteen (18) shall provide direct services except for CNAs sixteen (16) or older who are acting in the capacity of a CNA.

11.8 Employee records. Individual employee records are required, and must contain the initial date of employment, date of birth, home address and telephone number, experience and qualifications, social security number, copy of current occupational license (if applicable), references and reference check information, job description, record of participation in in-service, orientation or other training programs, results of annual personnel evaluations, disciplinary actions, illness and injury records and date of and reason for termination. Records may be computerized.
Section 12

Services and Service Coordination

12.1 Services. The following services must be offered:

12.1.1 Service coordination to identify a consumer’s need and desire for services and to coordinate the appropriate types and amounts of services, as identified in the service plan. This activity is to be carried out with the involvement of the consumer, the service provider and other persons of the consumer’s choice, as applicable. Service coordination includes:

12.1.1.1 Completing the functional assessment and reassessments;
12.1.1.2 Coordinating and participating in a health professional’s assessment or reassessment as necessary;
12.1.1.3 Reviewing, with the consumer, the findings of the functional assessments, the options available to address the consumer’s needs and the development of a service plan;
12.1.1.4 Implementation of a service plan;
12.1.1.5 Monitoring of the consumer’s needs and services furnished, as often as necessary;
12.1.1.6 Advocating on behalf of the consumer; and
12.1.1.7 Maintaining complete and accurate consumer records.

12.1.2 Housekeeping services to assist consumers with IADLs;
12.1.3 Assistance with ADLs;
12.1.4 At least one nutritious meal a day;
12.1.5 Chore services to assist with heavy cleaning; and
12.1.6 Other goods and services identified in the service plan.

12.2 Additional responsibilities. The provider must assure that:

12.2.1 Administrators meet the requirements of Section 10.5 of these regulations;
12.2.2 Written agreements with service providers and, if applicable, the building owner, are current and comply with the applicable laws and regulations;
12.2.3 The names, addresses, telephone numbers for and descriptions of the services available from advocacy and legal assistance programs and the Long Term Care Ombudsman Program are posted conspicuously;

12.2.4 The requirements of the Maine Human Rights Act, Title 5 M.R.S.A. §4551 et seq., are observed;

12.2.5 Written admission criteria, discharge policies, complaint resolution procedures and consumer fee requirements are given to consumers at the time of application for service;

12.2.6 Consumer and program records are complete, current and available for Department review;

12.2.7 The site meets applicable state and/or federal regulations for handicapped accessibility;

12.2.8 Licensure requirements for food safety are met; and

12.2.9 Licensure requirements for building safety are met.
Section 13

Dietary Services

13.1 Food Safety. An Assisted Living Program site with a community kitchen must have a valid license from the Department of Health and Human Services, Division of Health Engineering. Meals prepared off-site must be prepared by an appropriately licensed provider.

13.2 Consumer participation in meal planning. Consumers shall be encouraged to participate in food planning.

13.3 Meals. Food shall be served at the proper temperatures.

13.4 Registered dietitian. A registered dietitian shall be required to sign off annually on menus and menu cycles.

13.5 Planned menus. Menus shall be planned in accordance with consumers’ needs and preferences.

13.6 Therapeutic diets. Therapeutic diets are considered treatments and shall be ordered, in writing, by a duly authorized licensed practitioner. Menus for medically prescribed therapeutic diets shall be planned, in writing, and approved by a registered dietitian.

13.7 Food supplies. For Assisted Living Programs that prepare meals on-site, supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.
Section 14

Physical Plant and Sanitation

14.1 **Applicable standards.** Buildings containing an Assisted Living Program must comply with all applicable local, state and federal rules and regulations regarding building safety, fire safety, handicapped accessibility and fair housing practices. When codes conflict, the higher standard shall apply.

14.2 **Bathrooms.** Public bathrooms must be safe and sanitary.

14.3 **Heat.** Heat needs to be available and individually controlled in each apartment.

14.4 **Water temperature.** The hot water temperature for consumer use must be between 105°F and 120°F and in adequate supply.

14.5 **Lockable door.** Each apartment must have a lockable door to common areas.

14.6 **Food preparation area.** Each apartment must have an area for the purpose of storing and preparing food. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either a two-burner stovetop or a microwave oven.

14.7 **Private water supply.** A private water supply shall be tested annually and a satisfactory result obtained.

14.8 **Garbage and rubbish.** Pending removal, all refuse collected in common areas or from consumer apartments shall be stored in cleanable, rodent-proof, covered containers.

14.9 **Insect and rodent control.** There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents.

14.10 **Poisonous and toxic materials.** When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment, utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. This section does not apply to materials belonging to consumers and stored in their apartments.
Section 15

Assisted Living Programs with Nursing Services (Type 2)

15.1 License required. Before an assisted living program can provide nursing services directly or indirectly, it must demonstrate to the Department’s satisfaction the capacity to provide nursing services and receive a Type 2 Assisted Living Program license.

15.2 Nursing services. The assisted living program shall disclose whether it provides nursing services, directly or indirectly, as follows:

15.2.1 Services of a Registered Professional Nurse; and/or

15.2.2 Registered Professional Nurse coordination and oversight of consumer care services provided by unlicensed health care assistive personnel.

Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED June 1, 2006 [major substantive rulemaking process]

AMENDED August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)], filing 2008-352. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _________________________________ (hereinafter “the Provider”) and you, ___________________________________. This contract describes your financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a customized addendum but these additional provisions may not conflict with or replace the use of the standard contract. The intent of having a standard contract in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you and the Provider agree as follows:

I STANDARDS

The Provider will help to further your independence and respect your privacy and personal choices, including your choice to continue to reside here for as long as the Provider and program, as it is fundamentally designed, is able to meet your needs. The Provider’s programs will be consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services, the Provider will assist you in making other arrangements including moving somewhere else, if necessary.

II PROVIDER LICENSE

The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the ____________. This Provider is licensed as follows (check one):

☐ Level I Residential Care Facility
☐ Level II Residential Care Facility
☐ Level III Residential Care Facility
☐ Level IV Residential Care Facility
☐ Level I PNMI Residential Care Facility
☐ Level II PNMI Residential Care Facility
☐ Level III PNMI Residential Care Facility
☐ Level IV PNMI Residential Care Facility
☐ Type I Assisted Living Program
☐ Type II Assisted Living Program

☐ This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this
contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

III APPENDICES

The following Appendices are attached and made a part of this contract:

☑ Appendix A: Admissions Policy
☑ Appendix B: Your Rights
☑ Appendix C: Grievance Policy
☐ Appendix D: Tenancy Obligations (check if this applies)
☐ Appendix E: Additional terms in Customized Addendum (check if this applies)
☐ Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider

IV ADMISSION POLICY

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

V SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE

A. You agree to purchase:

☐ Housing and Services.
☐ Housing Only.

B. You agree to pay the following current rate to the Provider:

☐ Daily rate of $________
☐ Monthly rate of $________
☐ The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

The landlord is ________________________________.

The amount of your current monthly rent is __________.

D. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

1. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
2. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and
3. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.
E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:

1. **Personal Supervision.**
   - Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
   - Staff will accompany you to medical appointments
   - The Provider provides an escort for regular travel
   - The Provider has qualified staff in the building 24-hours/day
   - Other ____________________________
   - Additional provisions: See Appendix E

2. **Assistance with activities of daily living.** (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)
   - Walking
   - Changing position in bed
   - Transferring from place to place
   - Dressing
   - Eating
   - Using the bathroom
   - Bathing
   - Personal hygiene, such as help washing your hair
   - Other ____________________________
   - Additional Provisions: See Appendix E

3. **Incidental activities of daily living.**
   - Using the telephone
   - Handling your finances
   - Banking
   - Shopping
   - Light housekeeping
   - Heavy housekeeping
   - Getting to appointments
   - Barber/beautician services
   - Other ____________________________
   - Additional Provisions: See Appendix E

4. **Medication assistance.**
   - Obtaining medications from the Pharmacy of your choice: ____________________________.
     - Ordered by Provider
     - Delivered by the Pharmacy
     - Ordered by you/family member
     - Picked up by Provider
     - Picked up by you/family member

   - Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)
Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for example, information that they have been administered at the right time and in the right dose

Other
Additional Provisions: See Appendix E

5. Food Service.

Meal preparation (including the cost of food) _____ times each day
Meal preparation (food purchased separately by you) _______ times each day
Nutritious between-meal snacks _________ times each day
Special diets ordered by your physician as follows:

Shopping for groceries you purchase
Meal planning
Other ___________________________

Additional Provisions: See Appendix E

6. Transportation services.

Arranging transportation (cost of transportation included) _______ miles roundtrip
Arranging transportation (cost of transportation not included)
Transportation without escort to medical appointments within ________ miles roundtrip
Transportation with escort to medical appointments within _______ miles roundtrip
Other ___________________________

7. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:

None
Skilled nursing services provided by a registered professional nurse.
Registered professional nurse who oversees staff and coordinates your health care needs.

8. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

All housing costs (there will be no extra charges)
All housing costs except:

Semi-private room
Shared bathroom
Private room
Private bathroom
Efficiency apartment
One Bedroom Apartment
Two Bedroom Apartment
Other
Additional Provisions: See Appendix E
You have a lease agreement with a landlord other than the Provider: See Appendix F
9. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

- None
- Non-prescription analgesics and antacids
- Bedroom furnishings: ________________________________
- Pillows, sheets, linens, towels
- Laundry supplies and equipment
- Laxatives
- Thermometers
- Non-prescription skin creams/lubricants
- Mouthwash
- Toothpaste
- Other non-prescription ointments: _____________________
- Shampoo
- Soap
- Facial tissue
- Toilet tissue
- Paper towels
- Incontinence supplies
- Other: ________________________________

10. Additional Services

- See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

- See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame: ________________________________. If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.

B. Source of payment for services covered by the daily/monthly rate:
- Self-pay
- Self-pay and billing to a third party: __________________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:
- Self-pay
E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.
☐ There is a security deposit. This security deposit will not exceed one month’s rent (currently $_________), and will be refunded to you within thirty (30) days from date of discharge/death.

☐ The following costs may be deducted from the security deposit:
________________________________________________________________________________________

☐ Security deposits are part of your separate lease with the Landlord.

G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.

☐ In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.

☐ In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.

IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.

B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).
C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

- Manage own affairs
- Durable Financial Power of Attorney
- Health Care Power of Attorney
- Representative Payee
- Guardian
- Conservator
- Trustee
- Advance Directive/Living will
- Other

You agree to supply copies of all relevant information about those individuals who are responsible for your affairs as they relate to your care under this contract.

XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.
XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________

_______________________________
Signature of Provider Representative

_______________________________
Name of Provider

_______________________________
Address

_______________________________
Your Name

_______________________________
Your Signature or Signature of Your Agent

_______________________________
Address

_______________________________
Telephone Number
APPENDIX F

This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

A. Your Landlord is: _____________________________.

B. Your current monthly rent is: _____________________.

C. Among other things, your lease provides that you will receive the following (check all that applies):

- All housing costs (there will be no extra charges)
- All housing costs except:

  ______________________________________________________
  ______________________________________________________

- Semi-private room
- Shared bathroom
- Private room
- Private bathroom
- Efficiency apartment
- One Bedroom Apartment
- Two Bedroom Apartment
- Other

D. Your lease is attached here for reference.
Regulations Governing the Licensing and Functioning of Assisted Housing Programs:

Level I Residential Care Facilities
Part of 10-144 Chapter 113
Effective Date (Last Amended): August 20, 2008

Maine Department of Health and Human Services
Division of Licensing and Regulatory Services
State House Station 11
41 Anthony Ave.
Augusta, ME 04333-0011
(207) 287-9300
1-800-791-4080
TDD 1-800-606-0215
dlrs.info@maine.gov
Level 1 Residential Care Facilities

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Section 1

Purpose

These rules establish minimum standards for the licensing of Level I Residential Care Facilities. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.
Section 2

Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I – an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II – an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Professional Nurse; and/or

2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.
2.11 "Assisted Living Services" means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:

2.11.1 "Administration of medications" means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;

2.11.2 "Nursing services" means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

2.12 "Certified Nursing Assistant (CNA)" means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.13 "Certified Nursing Assistant/Medications (CNA-M)" means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.14 "Deficiency" means a violation of State licensing regulations.

2.15 "Dementia" means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

2.16 "Department" means the Maine Department of Health and Human Services.
2.17 “Directed Plan of Correction” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 “Distinct Part” means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

2.19 “Duly Authorized Licensed Practitioner” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.

2.20 “Emergency” means either those events that demonstrate that a resident has an urgent medical or psychological need which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 “Independent Housing with Services Program” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.
2.28 “Instrumental Activities of Daily Living (hereinafter IADLs)” includes, but is not limited to, preparing or receiving of a main meal, taking medication, using the telephone, handling finances, banking, shopping, routine housework, laundry and getting to appointments.

2.29 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.

2.30 “Licensee” means the person to whom a license is issued.

2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.
2.40 “Provider” means the licensee.

2.41 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.42 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.43 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.44 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.

2.45 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.46 “Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.

2.47 “Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.48 “Resident Rights” means those rights enumerated in Title 22 M.R.S.A. §7921 et seq., 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also enumerated in Section 5 of these regulations.

2.49 “Residential Care Facility” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensing nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:

2.49.1 Level I – a facility with a licensed capacity of one (1) to two (2) residents.

2.49.2 Level II – a facility with a licensed capacity of three (3) to six (6) residents.

2.49.3 Level III – a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.49.4 Level IV – a facility with a licensed capacity of more than six (6) residents.
2.50 “Residential Services Plan” means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.51 “Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.51.1 Which is intended to restrict freedom of movement or access to one’s body;

or

2.51.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

2.52 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person preparing the medication for the individual.

2.53 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.54 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department which describes deficiencies in complying with these regulations.

2.55 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department

2.56 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.57 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.58 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 Responsibility for compliance. The applicant/licensee shall comply with these regulations.

3.2 Unlicensed facilities. No person, firm, partnership, association, corporation or other entity shall manage or operate a Level I residential care facility without a license.

3.3 Person license issued to. The license is only valid for the named licensee(s).

3.4 Application and licensure.

3.4.1 Application required. The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which the applicant has taken no action after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Residential Care Facilities - $10.00 each licensed bed.

3.4.2 Admission and scope of services policy. Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of nursing Services consistent with applicable state and federal law.

3.4.3 Additional licensing requirements. Prior to the issuance of a license and prior to re-licensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A residential care facility that has one (1) to three (3) beds must comply with the one-family and 2-family dwelling chapter of the Life Safety Code.

3.4.3.1.2 A residential care facility with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board
A residential care facility with more than sixteen (16) beds must comply with the sections of the Life Safety Code that apply to large facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated thereunder, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);

3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing; and

3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq.

3.5 Requirement for bond. The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 Limitations on serving as legal representative. No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 Issuance of license. A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the applicant, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license.

3.8 Default licensing. If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the
application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

3.9 **Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program or residential care facility; and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.

The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 **Adult day services programs.** When an adult day services program is physically located in an assisted living program or residential care facility, separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the license.

3.11 **Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities, adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 **Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.
3.13 **Conditional license.** The department may issue a conditional license when the individual or agency fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.

3.14 **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program or residential care facility is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level I residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for Level I Residential Care Facility license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.
3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.

3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

3.20.1 Issuance of a Conditional license;
3.20.2 Refusal to issue or renew a license;
3.20.3 Revocation or suspension of a license; or
3.20.4 Refusal to issue a Provisional license.

3.21 **Renewal.** The department must receive a renewal application thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;
3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 **Actions requiring prior written approval.** When proposed construction, renovation, or alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 **Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 **Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the department. See also Section 4.10 of these regulations.
3.25 Rates and Contracts.

3.25.1 Rates. Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and will all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions, as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar days notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision which provides for the payment of attorney fees or any other cost of collecting payments from the resident.

3.25.3.6 The following shall be appended to the contract and made a part thereof:
3.25.3.6.1 Grievance procedure;
3.25.3.6.2 Tenancy obligations, if they exist;
3.25.3.6.3 Resident rights; and
3.25.3.6.4 Copy of the admissions policy.

3.25.3.7 The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;
3.26.2 Information regarding the type of facility and the licensing status;
3.26.3 The Maine Long Term Care Ombudsman Program brochure;
3.26.4 The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;
3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and
3.26.6 The program’s staff qualifications.
3.27 Information for residents of Alzheimer’s/dementia units. When a provider operates a unit meeting the requirements of a Designated Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;
3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;
3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;
3.27.4 The frequency and types of group and individual activities provided by the program;
3.27.5 A description of family involvement and the availability of family support programs;
3.27.6 A description of security measures provided by the facility;
3.27.7 A description of in-service training provided for staff; and
3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

3.28 Refunds. Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.
3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.
3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from third a party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.

3.29 Use of personal funds by operator. Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. *(Class IV)*

3.30 Tenancy obligation. Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

3.31 Administrative and resident records.
3.31.1 Confidentiality. All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 Location of records. All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 Inspection of records. All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 Record retention. All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.

3.31.5 Storage of records. Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 Disaster plan. Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 Confidential information. Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 **Inspections required.** The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. [Class I]

4.2 **Frequency and type of inspections.** An inspection may occur:

4.2.1 Prior to the issuance of a license;

4.2.2 Prior to renewal of a license;

4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;

4.2.4 When there has been a change or proposed change in administrator, physical plant or services;

4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;

4.2.6 For routine monitoring of resident care; or

4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 **Licensing records kept by the department.** The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 **Complaints.** The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.

4.5 **Enforcement process.**

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.
4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.

4.5.3 Failure to correct any deficiency (ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.

4.5.4 Informal conference. If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of the Division of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 Grounds for intermediate sanctions. The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program or residential care facility without a license;

4.6.2 Operation of an assisted living program or residential care facility over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.

4.7 Intermediate sanctions. The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:
4.7.1 The assisted living program or residential care facility may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.

4.8 Financial penalties.

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment
of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.

4.8.5 The amount of any penalty to be imposed shall be calculated according to the following classification system:

4.8.5.1 Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1;

Operation of an assisted living program or residential care facility over licensed capacity, or

Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.

4.8.5.2 Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2;

Failure to submit a POC within ten (10) working days after receipt of an SOD; or

Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.

4.8.5.3 The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3;

The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.

4.8.6 The department may impose a financial penalty on a licensee of a Level I residential care facility for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level I residential care facility.

4.8.7 Failure to comply with 22 M.R.S.A. §7904-A (6) regarding time drills, as further described in Section 13.3, commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to
the department for a delay in payment or installment payments or, in
certain circumstances, to have the penalty reduced.

4.8.8.1 In order to have the payment delayed or paid in installments,
a provider must supply sufficient information to the
department to demonstrate that immediate full payment of
the total amount due would result in the interruption of the
provision of necessary services to residents.

4.8.8.2 In order to have a fine reduced, a provider must supply
sufficient information to the department to demonstrate that
payment in full would result in a permanent interruption in
the provision of necessary services to residents.

4.8.8.3 The department has the authority to determine whether the
provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations,
the department may refuse to issue or renew a license to operate an
assisted living program or residential care facility.

4.9.2 If, at the expiration of a full or provisional license, or during the term of a
full license, the provider fails to comply with applicable laws and
regulations, and, in the judgment of the Commissioner, the best interest of
the public would be served, the department may issue a conditional
license, or change a full license to a conditional license. Failure by the
licensee to meet the conditions specified by the department shall permit
the department to void the conditional license or refuse to issue a full
license. The conditional license shall be void when the department has
delivered in hand or by certified mail a written notice to the licensee, or, if
the licensee cannot be reached for service in hand or by certified mail, has
left written notice thereof at the agency or facility. For the purposes of
this subsection the term “licensee” means the person, firm, or corporation
or association to whom a conditional license or approval has been issued.

4.9.3 Upon investigation, whenever conditions are found which, in the opinion
of the department, immediately endanger the health or safety of the
persons living in or attending the assisted living program or residential
care facility, the department may request that the District Court suspend
the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184,
subsection 6.

4.9.4 Any license may be suspended or revoked for violation of applicable
laws or regulations, committing, permitting, aiding or abetting any illegal
practices in the operation of the assisted living program or residential
care facility, or conduct or practices detrimental to the welfare of persons
living in or attending the facility/program. When the department
believes a license should be suspended or revoked, it shall file a
complaint with the District Court as provided in the Maine
Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375 §10051.

4.9.5 Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition
the Superior Court to appoint a receiver to operate the assisted living
program or residential care facility in the following circumstances:

4.9.5.1 When the assisted living program or residential care facility
intends to close, but has not arranged for the orderly transfer
of its residents at least thirty (30) calendar days prior to
closure;

4.9.5.2 When an emergency exists which threatens the health,
security or welfare of residents; or

4.9.5.3 When the assisted living program or residential care facility
is in substantial or habitual violation of the standards of
health, safety or resident care established under State or
Federal laws and regulations, to the detriment of the welfare
of the residents.

4.10 Appeal rights. Any assisted living program or residential care facility aggrieved by
the department’s decision to take any of the following actions, or to impose any of
the following sanctions, may request an administrative hearing to refute the basis of
the department’s decision, as provided by the Maine Administrative Procedure Act,
Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity
with the department’s Administrative Hearings Regulations. A request for a hearing
must be made, in writing, to the Assistant Director of the Division of Licensing and
Regulatory Services, Community Services Programs and must specify the reason for
the appeal. Any request must be submitted within ten (10) working days from receipt
of the department’s decision to:

4.10.1 Issue a conditional license;

4.10.2 Amend or modify a license;

4.10.3 Void a conditional license;

4.10.4 Refuse to issue or renew a full license;

4.10.5 Refuse to issue a provisional license;

4.10.6 Stop or limit admissions;

4.10.7 Issue a directed POC;

4.10.8 Affirm or modify an assessment of penalties after an informal review;

4.10.9 Deny an application to reduce the amount or delay the payment of a
penalty; or
4.10.10 Deny a request for a waiver of a rule.

4.11 Operating without a license

4.11.1 License required. A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level I residential care facility.

4.11.2 Civil penalty for operating without a license. A person, firm, partnership, association, corporation or other entity who operates a Level I residential care facility without a license commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

4.11.3 Injunctive relief. Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.11.

4.11.4 Enforcement. The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.11.

4.11.5 Jurisdiction. The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.11.

4.11.6 Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.11 occurred.

4.11.7 Right of entry. To inspect the premises of a Level I residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.11.8 Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level I residential care facility with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.11. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.11.9 Noninterference. An owner or person in charge of an unlicensed Level I residential care facility may not interfere with or prohibit the interviewing by
the department of residents or consumers of services.

4.11.10 Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.11 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.11.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.11, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

4.11.10.2 In an action under section 4.11, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney’s fees.
Section 5

Resident Rights

5.1 **Resident rights.** The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices. \([\text{Class IV}]\)

5.2 **Freedom of choice of provider.** For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice. \([\text{Class IV}]\)

5.3 **Rights regarding transfer and discharge.** Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution; \([\text{Class IV}]\)

5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others; \([\text{Class IV}]\)

5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there; \([\text{Class IV}]\)

5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident; \([\text{Class IV}]\)

5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; \([\text{Class IV}]\) or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered. \([\text{Class IV}]\)

5.4 **Transfer or discharge.** When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. \([\text{Class IV}]\) Each notice must be written and include the following:
5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; [Class IV]

5.4.2 The effective date of the transfer or discharge; [Class IV]

5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leave of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of residential care facilities shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations lists advocacy services which may be available to resident. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These
documents shall be maintained and available for review upon request by the Department. [Class IV]

5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the resident can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 Right to manage financial affairs. Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 Right to freedom from abuse, neglect or exploitation. Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 Rights regarding restraints and aversive conditioning. There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]
5.11.2 In the case of a person with mental retardation, the provider must comply
with the requirements of the Regulations Governing the Use of Behavioral
Procedures in Maine Programs Serving Persons with Mental Retardation
and the Regulations Governing the Use of Restraints in Community
Settings. These regulations are promulgated and enforced by the
Department of Health and Human Services (formerly known as the
Department of Behavioral and Developmental Services (BDS)). [Class I,
II, III, IV]

5.11.3 For any resident who is a client of the Department of Health and Human
Services Adult Mental Health Program (formerly known as Behavioral and
Development Services) due to his/her mental illness, the facility/program
shall comply with the Rights of Recipients of Mental Health Services,
promulgated and enforced by the Department of Health and Human
Services (formerly known as the Department of Behavioral and
Developmental Services (BDS)). [Class I, II, III, IV]

5.12 Right to confidentiality. Residents’ records and information pertaining to their
personal, medical and mental health status is confidential. Residents and their legal
representatives shall have access to all records pertaining to the resident at
reasonable times, in the presence of the provider or his/her representative, within
one (1) business day of the request. Residents and their legal representatives are
entitled to have copies made of their record within one (1) business day of the
request. The licensee and employees shall have access to confidential information
about each resident only to the extent needed to carry out the requirements of the
licensing regulations or as authorized by any other applicable state or federal law.
The written consent of the resident or his/her legal representative shall be required
for release of information to any other person except authorized representatives of
the Department or the Long Term Care Ombudsman Program. The Department
shall have access to these records for determining compliance with these regulations.
Records shall not be removed from the facility, except as may be necessary to carry
out these regulations. Upon admission, each resident shall sign, and date a written
consent which lists individuals, groups, or categories of individuals with whom the
program may share information (e.g., sons, daughters, family members or duly
authorized licensed practitioners, etc.). A written consent to release of information
shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A.
§1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 Right to refuse to perform services for the facility. Residents may refuse to
perform services for the facility. [Class IV]

5.14 Right to privacy and consideration. Residents shall be treated with respect.
Residents shall also be treated with respect and consideration with regard to their
individual need for privacy when receiving personal care or treatment, preferred
mode of language and communication. [Class IV]
5.15 Right to communicate privately with persons of choice. Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 Right to participate in activities of choice. Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 Right to personal clothing and possessions. Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 Couples. A couple residing in an assisted housing program has the right to share a room. [Class IV]

5.19 Right to be informed of services provided by the facility/program. Residents shall be fully informed of items or services which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 Right to refuse treatment or services. Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment which has not been consented to by a competent resident. [Class IV]

5.21 Right to be free from discrimination. A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 Right to information regarding deficiencies. Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to, Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]
5.23 **Notification of Residents Rights.** The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative, within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the change. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. [Class IV]

5.24 **Bill of rights for persons with mental retardation.** Facilities/programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

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

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

Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

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

5.26 **Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to reside in an assisted living program, the licensee shall:

5.26.1 Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]
5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 Right of action. In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 Right to appeal an involuntary transfer or discharge. The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the facility unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director of the Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. [Class IV]

5.29 Resident adjudicated incompetent. In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations. [Class IV]

5.30 Resident councils

5.30.1 Residents of assisted living programs and residential care facilities have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:

5.30.3.1 To be provided with a copy of the facility’s policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved; [Class IV]
5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights; [Class IV]

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement; [Class IV]

5.30.3.4 To help identify residents’ problems and recommend ways to ensure early resolution; [Class IV]

5.30.3.5 To inform the administrator of the opinions and concerns of the residents; [Class IV]

5.30.3.6 To find ways of involving the families and residents of the facility; [Class IV]

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and [Class IV]

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. [Class IV]

5.31 **Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies. [Class IV]
Section 6

Alzheimer’s/Dementia Unit Standards

6.1 Alzheimer’s/Dementia Care Units. A facility or unit may be designated as an Alzheimer’s/Dementia Care Unit if the following regulations are met and the facility has received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer’s/Dementia unit, the resident’s individual record must contain:

6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician’s diagnosis of Alzheimer’s disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimer’s/dementia care unit shall have;

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways which allow residents to ambulate, but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;

6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and
6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 Physical environment. The designated Alzheimer’s/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimer’s/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.
6.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.

6.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimer’s/Dementia Care Units. All facilities with Alzheimer’s/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.4.3 Social activities (e.g., games, music, reminiscing, etc.);

6.4.4 Crafts (e.g., decorations, pictures, etc.);

6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.4.7 Spiritual activities.

6.5 Pre-service training for Alzheimer’s/Dementia Care Units. For pre-service training, all facilities with Alzheimer’s/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer’s disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer’s Disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer’s Disease and related dementias;

6.5.2 Communication basics;

6.5.3 Creating a therapeutic environment;

6.5.4 Activity focused care;
6.5.5 Dealing with difficult behaviors; and

6.5.6 Family issues.
Section 7

Medications and Treatments

7.1 Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [Classes I/II/III]

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [Classes I/II/III]

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4 If a resident has Diabetes unlicensed persons must be trained by a registered professional nurse in regard to the management of persons with diabetics. The registered professional nurse must provide in-service training and documentation to include: Documentation of training shall be included in the employee record. [Class III]

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation;

7.1.4.6 Treatment and prevention of insulin reaction including signs/symptoms;

7.1.4.7 Foot care;
7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and

7.1.4.9 Standard Precautions.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.2 Self-administration of medications. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident /legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner, and a facility representative.

7.3 Medication storage. Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. [Class III]

7.4 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or use of medical equipment not specifically outlined in these Regulations, there must be documentation in the employee file.

7.5 Whenever employees are in serviced or taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
Section 8

Scope of Licenses

8.1 Licensing of facilities with 2 or fewer residents. Licensing of Level I facilities for 1-2 beds is optional under state law. This means that facilities may have two residents without a license. A Level I facility with one or two residents may voluntarily apply for and receive a license under these regulations if it meets all applicable regulations.

8.2 Facilities licensed as children’s homes. The Department may exempt a licensed children’s home from requiring a Level I license once a resident reaches the age of eighteen (18) if the resident has not completed his/her prescribed program of treatment, care or education, or discharge from the facility will occur within nine (9) months of the date the resident turned eighteen (18). If the facility’s purpose is to treat or care for children, and the above requirements are met, the Department may grant a written exemption from licensure in order for the adult resident’s income to be supplemented.

8.3 Dual licensure. No facility shall be granted a Level I license, and any previously granted Level I license may be subject to revocation, if another license or approval is in effect or granted, unless the Department has determined that dual licensure will not have an adverse impact on the residents.

8.4 Maximum number of adult residents. The maximum number of beds for which a facility may be licensed will be determined by the Department, according to the regulations set forth herein. Respite care may only be provided in licensed beds.

8.5 Physical plant changes. No alterations in the size or arrangement of the physical plant, location of resident rooms, change in the heating system, water supply system, sewage disposal system, utilities or similar systems shall be made without the prior written approval of the Department in accordance with these regulations.

8.6 Residents under the age of 18. A person who is seventeen (17) years of age may be a resident of a Level I facility without the home being required to be licensed as a children’s home, if the Department determines in writing prior to placement that such a placement is in the best interest of that person. The general physical and mental health of all residents of the facility shall be considered in this decision.

Verification of Credentials

8.7 Licensed Staff. Prior to employing licensed staff, the facility must verify that the licensed person has a valid and current license.

8.8 Employing CNA’s and CNA-M’s. Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or if the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.
8.9 **Prohibited Employment.** The facility may not hire as unlicensed assistive personnel as defined in section 2.57 an individual who is prohibited from employment as a certified nursing assistant as outlined below and in section 8.8:

8.9.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.9.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.9.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.9.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants.

8.10 **Time Limit on Consideration of Prior Criminal Conviction:** Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

8.10.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;

8.10.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.11 **Exception:** The restrictions on employment under sections 8.9 and 8.10 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of 22 M.R.S.A. §1812 (G) (8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.
8.12  **Notification:** A nursing assistant training program must notify applicants to that program of the restrictions under 8.9. and 8.10 prior to the acceptance of any applicant.
Section 9

Provider and Staff Qualifications and Responsibilities

9.1 **Provider’s age.** The provider shall be at least twenty-one (21) years of age. [Class III]

9.2 **Education, experience and training.** The provider shall submit satisfactory evidence regarding education, experience and training to meet the needs of the residents to be served.

9.3 **Qualifications of the provider.** The provider must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. In making this determination, the Department may consider:

9.3.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the provider.

9.3.2 Understanding of and compliance with resident rights.

9.3.3 Any information reasonably related to the ability to provide safe and compassionate services.

9.4 **Responsibilities.** The provider is responsible for the overall operation of the facility and shall:

9.4.1 Ensure that staff are qualified, adequately trained and competent and are performing their duties consistent with all regulations and provisions of law;

9.4.2 Make work assignments according to the qualifications of staff and the number and needs of the residents; and

9.4.3 Assure that each resident’s abilities and needs are adequately assessed and that each resident is offered all necessary services.

9.5 **Qualifications of other staff.** Other caregivers must meet the following standards:

9.5.1 Any person who is given supervisory responsibility over residents must be a capable and dependable person at least eighteen (18) years of age, who is not a resident. Such a person, or the provider, will be available whenever a resident is in the facility. A record of the name, address and telephone number of persons who provide supervision in the absence of the provider shall be kept on file in the facility and shall be made available to the Department upon request. This person will be instructed regarding evacuation procedures for the facility. [Class I, II, III, IV]
9.5.2 Residential care staff shall attend and show evidence of successful completion of any training that the Department determines to be necessary. [Class II]

9.5.3 No provider shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease that would threaten the health and welfare of the residents, unless Standard Precautions reduce or eliminate exposure or risk to the residents. [Class I, II, III, IV]

9.6 Consultation services.

9.6.1 **Pharmacist consultant services.** The Department reserves the right to require pharmacist consultation in the event that serious or multiple deficiencies in medication administration are noted.

9.6.2 **Registered nurse consultant services.** The Department reserves the right to require licensed nurse consultation in the event that serious or multiple deficiencies in the health care of residents are noted.

9.6.3 **Consultant dietitian services.** The Department reserves the right to require a qualified consultant dietitian in the event that serious or multiple deficiencies in food service are noted.
Section 10

Health Care and Access to Services

10.1 Medical and health care. The provider shall coordinate appropriate health care services and assist residents to access them. Each resident shall have access to a duly authorized licensed practitioner of his/her choice. Each resident shall have an annual physical, unless otherwise specified by his/her duly authorized licensed practitioner. [Class II]

10.2 Transportation. The facility shall provide or arrange transportation to medical and other appointments.

10.3 First aid kit. A first aid kit containing supplies for treatment of minor injuries, such as cuts, scrapes or first-degree burns, shall be available in the facility. All staff shall be instructed in the use of any item in the kit.

10.4 Nursing services. Nursing services are to be provided by professional nurses pursuant to Title 32 M.R.S.A. §2102, subsection 2. This includes coordination and oversight of assisted living services by unlicensed assistive personnel.
Section 11

Management of Resident Personal Accounts

11.1 Written permission. The licensee or his/her representative may only manage personal accounts for a resident if requested to do so, in writing, by the resident or the resident’s legal representative.

11.2 Documentation. The provider must maintain and document an accounting of the funds, with supporting documentation for each expenditure that exceeds $2.00.

Under no circumstances shall the personal funds of any resident, beyond what the provider receives for monthly payments, be used for the operating costs of the facility or the personal expenses of the provider or his/her representative.

11.3 Commingling. Residents’ personal funds shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility.
Section 12

Resident and Other Records

12.1 Summary sheets. There shall be a summary sheet maintained for each resident that includes applicable information, including the resident’s name, birth date, date of admission, duly authorized licensed practitioner’s name, address and telephone number, nearest relative or friend’s name, address and telephone number, person to be notified in an emergency, their name, address and telephone number, day program name, telephone number, address and contact person, date of discharge or death and significant medical/social issues.

12.2 Resident records. There shall be a record maintained for each resident that contains applicable information on physical and mental condition, behavior, mood, eating habits, incidents or accidents, documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, and the dates of medical examinations, other medical and dental treatment and drugs prescribed.

12.3 Discharge summary. Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall include, but not be limited to the following:

12.3.1 Reason for discharge; and

12.3.2 Targeted living arrangement.

12.4 Record of personal property. The provider shall maintain a list of each resident’s property including items of personal value.

12.5 Employee records for a corporation, partnership, association or an entity other than an individual. For any provider that is a corporation, partnership, association or an entity other than an individual, the Department may request that reasonable personnel policies and records be kept documenting that employees have been trained and are competent and performing their duties consistent with these regulations.
Section 13

Safety Standards

13.1 Fire safety plans. Each facility must have a fire safety plan. The fire safety plan and any changes in the plan are to be developed in conjunction with and approved by, local or state fire authorities. [Class III]

13.2 Elements of a fire safety plan. The plan shall note steps to be taken, location of emergency exits, evacuation procedures and the telephone numbers of police, fire, ambulance and duly authorized licensed practitioners or other individuals to contact in an emergency. The fire safety plan shall be posted conspicuously in the facility.

13.3 Drills or rehearsals. Drills or rehearsals of the emergency steps to be taken shall be conducted at irregular times of the day, at least six (6) times per year spaced throughout the year. Two of the six (6) drills must be conducted while residents are asleep. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. [Class II]

13.4 Record of drills or rehearsals. A record shall be kept on a form provided by the Department showing the date and time of each drill. [Class II]

13.5 Free-standing, solid fuel burning stoves. Freestanding, solid fuel burning stoves (including wood and coal) are permitted in living areas, but not in bedrooms. They must be installed within NFPA No. 211 guidelines or as regulated by the Solid Fuel Board of Maine. Guidelines contained in NFPA No. 211 may be obtained by contacting the Office of the State Fire Marshal. [Class III]

13.6 Portable electric heaters. Portable closed liquid electric heaters may be used if approved by the Office of the State Fire Marshal. No radiant or quartz heaters shall be used. [Class III]

13.7 Extension cords. Extension cords are prohibited, except for those cords that have a fuse mechanism. [Class III]

13.8 Smoke detectors. Each smoke detector must be in working order. [Class I]
Section 14

Nutrition and Health

14.1 **Quality and quantity of food.** The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

14.2 **Resident participation in meal planning and preparation.** Residents shall be encouraged to participate in food planning and preparation, as appropriate.

14.3 **Second-grade products.** Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods shall not be used. *(Class III)*

14.4 **Food supplies.** Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.

14.5 **Residents with communicable diseases.** No resident with a communicable disease shall be admitted if that resident’s condition or behavior endangers the health and welfare of other residents and no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.
Section 15

Living Area and Sleeping Accommodations

15.1 Living and dining areas. Residents shall be provided an area for dining and relaxation sufficient in size to accommodate the provider’s family and the residents. Comfortable, non-folding chairs must be provided. The rooms shall be well lighted and free of hazards. A television set for use by the residents shall be available.

15.2 Bedrooms.

15.2.1 For facilities initially licensed on or after May 29, 1998, a minimum of one hundred (100) square feet of usable floor space shall be provided in a single bedroom. A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

15.2.2 For all facilities initially licensed before May 29, 1998, a minimum of eighty (80) square feet of usable floor space shall be provided in a single bedroom. A minimum of seventy (70) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

15.2.3 Usable floor space shall be calculated only for that floor space having a ceiling height of a minimum of six (6) feet, except as provided in Section 15.2.4. Corridors, passageways, vestibules, alcoves, closets and wardrobe space shall be excluded from the calculations of usable floor space.

15.2.4 Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) may be counted toward usable floor space for the room.

15.2.5 There shall be no more than two (2) people in each room. Couples who are both residents of the facility have the right to share a room.

15.2.6 Each resident bedroom shall have a solid door that can be closed for privacy.

15.2.7 Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum required floor space per Sections 15.2.1 and 15.2.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. In air-conditioned buildings, at least one window in each room must be able to be opened.
15.2.8 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident bedroom. No resident room shall be used for access to other rooms or corridors. [Class III]

15.2.9 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing.

15.2.10 Each resident shall be offered a bed and mattress that is at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds do not meet this requirement.

15.2.11 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected.

15.2.12 For each bed there shall be offered:

15.2.12.1 At least two (2) dresser drawers;

15.2.12.2 A comfortable non-folding chair in good repair;

15.2.12.3 A bedside table; and

15.2.12.4 A reading lamp.

15.2.13 The facility shall permit and encourage residents to use their own furnishings, space permitting.

15.2.14 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair.

15.2.15 There must be a direct source of heat to each bedroom.

15.2.16 There shall be an adequate towel, linen and bedding supply in addition to those in use, so that a complete linen change is available in the facility at all times.

15.2.17 Residents shall not share bedrooms with members of the provider’s family who are not receiving assisted living services, unless the facility obtains written permission from the Department. Permission will be granted if the arrangement is in the resident’s best interest and is acceptable to the resident or the resident’s guardian or conservator.
15.3 Renting space. The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.
Section 16

Sanitation and Safety

16.1 Maintenance. The facility must be kept clean and shall be maintained in a condition ensuring the health and safety of residents. All refuse collected in common areas or from resident’s rooms shall be stored in cleanable, rodent-proof, covered containers, pending removal. **[Class III]**

16.1.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

16.1.2 The administrator shall take immediate steps to correct any condition, in the physical facility or on the premises, which poses a danger to a resident’s life, health and/or safety. **[Classes II/III]**

16.2 Insect and rodent control. There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. Doors and windows used for ventilation must be screened.

16.3 Food safety and sanitation. Food shall be stored, prepared and served in a safe and sanitary manner. **[Class III]**

16.3.1 Kitchen and food preparation areas shall be located away from possible food contamination sources. **[Class III]**

16.3.2 Kitchen and food preparation areas must be clean, and food stored so as to be free from spoilage and contamination. **[Class III]**

16.3.3 All equipment, dishes, glassware and cooking utensils shall be in good repair. **[Class III]**

16.3.4 Refrigerator temperature shall not exceed forty-one degrees (41°) Fahrenheit. **[Class II]**

16.4 Bathrooms. Bathrooms must be safe, sanitary and in good repair.

16.4.1 Adequate indoor bathing and flush toilet facilities for the number of residents in the facility must be provided. For all facilities licensed on or after the effective date of these regulations, a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available.
16.4.2 Bathing facilities shall afford privacy.

16.4.3 If a resident needs grab bars to bathe safely, a bathing facility equipped with grab bars that meet the Americans with Disabilities Act standards will be required.

16.4.4 Facilities shall supply a sanitary means for washing and drying hands in bathrooms.

16.5 Telephone. There must be a listed telephone available to all residents.

16.6 Heat. Resident areas of the facility shall be maintained at a temperature of, at least, seventy degrees (70°) Fahrenheit or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. \[Class III\]

16.7 Hot water. Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. \[Class III\]

16.8 Exits. In facilities licensed prior to June 1, 1989, there must be at least two (2) usable exits that are remote from each other. In facilities initially licensed on or after June 1, 1989, there must be at least two (2) usable exit doors that are remote from each other. Exits must be clear of obstructions. \[Class III\]

16.9 Handrails. Inside and outside stairs are required to have handrails. Handrails on each side of the stairs may be required to meet the needs of residents. \[Class III\]

16.10 Private water supply. A private water supply shall be tested annually and a satisfactory result obtained. The Department will furnish the applicant with forms for water testing which must be submitted to the Division of Health Engineering. No license shall be issued to a facility that does not get its water from a municipal water system until:

16.10.1 A water analysis report has been obtained, indicating that the water supply meets the standards of the Division of Health Engineering, Department of Health and Human Services; or

16.10.2 An alternative source of water that meets those standards will be used until a satisfactory water analysis report is obtained. The alternate water source must be approved in writing by the Department. \[Class III\]

16.11 Poisonous and toxic materials. When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. \[Class III\]
16.12 **Animals.** There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly. [*Class III]*

16.13 **Dryer ventilation.** Dryers shall be vented to the exterior of the building. [*Class III]*
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED:
June 1, 2006 [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _________________________________ (hereinafter “the Provider”) and you, ___________________________________. This contract describes your financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a customized addendum but these additional provisions may not conflict with or replace the use of the standard contract. The intent of having a standard contract in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you and the Provider agree as follows:

I STANDARDS

The Provider will help to further your independence and respect your privacy and personal choices, including your choice to continue to reside here for as long as the Provider and program, as it is fundamentally designed, is able to meet your needs. The Provider’s programs will be consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services, the Provider will assist you in making other arrangements including moving somewhere else, if necessary.

II PROVIDER LICENSE

The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the _____________. This Provider is licensed as follows (check one):

☐ Level I Residential Care Facility
☐ Level II Residential Care Facility
☐ Level III Residential Care Facility
☐ Level IV Residential Care Facility
☐ Level I PNMI Residential Care Facility
☐ Level II PNMI Residential Care Facility
☐ Level III PNMI Residential Care Facility
☐ Level IV PNMI Residential Care Facility
☐ Type I Assisted Living Program
☐ Type II Assisted Living Program

☐ This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your
lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

III APPENDICES

The following Appendices are attached and made a part of this contract:

- Appendix A: Admissions Policy
- Appendix B: Your Rights
- Appendix C: Grievance Policy
- Appendix D: Tenancy Obligations (check if this applies)
- Appendix E: Additional terms in Customized Addendum (check if this applies)
- Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider

IV ADMISSION POLICY

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

V SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE

A. You agree to purchase:

- Housing and Services.
- Housing Only.

B. You agree to pay the following current rate to the Provider:

- Daily rate of $_______
- Monthly rate of $_______
- The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

- The landlord is ________________________________.
- The amount of your current monthly rent is ________.

D. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

4. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
5. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and
6. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:

1. **Personal Supervision.**
   - Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
   - Staff will accompany you to medical appointments
   - The Provider provides an escort for regular travel
   - The Provider has qualified staff in the building 24-hours/day
   - Other
   - Additional provisions: See Appendix E

2. **Assistance with activities of daily living.** (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)
   - Walking
   - Changing position in bed
   - Transferring from place to place
   - Dressing
   - Eating
   - Using the bathroom
   - Bathing
   - Personal hygiene, such as help washing your hair
   - Other
   - Additional Provisions: See Appendix E

3. **Incidental activities of daily living.**
   - Using the telephone
   - Handling your finances
   - Banking
   - Shopping
   - Light housekeeping
   - Heavy housekeeping
   - Getting to appointments
   - Barber/beautician services
   - Other
   - Additional Provisions: See Appendix E

4. **Medication assistance.**
   - Obtaining medications from the Pharmacy of your choice:
   - Ordered by Provider
Delivered by the Pharmacy
Ordered by you/family member
Picked up by Provider
Picked up by you/family member

Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)

Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for example, information that they have been administered at the right time and in the right dose

Other
Additional Provisions: See Appendix E

5. Food Service.

☐ Meal preparation (including the cost of food) _______ times each day
☐ Meal preparation (food purchased separately by you) _______ times each day
☐ Nutritious between-meal snacks _______ times each day
☐ Special diets ordered by your physician as follows:

☐ Shopping for groceries you purchase
☐ Meal planning
☐ Other

Additional Provisions: See Appendix E

6. Transportation services.

☐ Arranging transportation (cost of transportation included) _______ miles roundtrip
☐ Arranging transportation (cost of transportation not included)
☐ Transportation without escort to medical appointments within _______ miles roundtrip
☐ Transportation with escort to medical appointments within _______ miles roundtrip
☐ Other

7. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:

☐ None
☐ Skilled nursing services provided by a registered professional nurse.
☐ Registered professional nurse who oversees staff and coordinates your health care needs.

8. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

__________________________________________________________
__________________________________________________________
9. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

- None
- Non-prescription analgesics and antacids
- Bedroom furnishings: ________________________________
- Pillows, sheets, linens, towels
- Laundry supplies and equipment
- Laxatives
- Thermometers
- Non-prescription skin creams/lubricants
- Mouthwash
- Toothpaste
- Other non-prescription ointments: __________________
- Shampoo
- Soap
- Facial tissue
- Toilet tissue
- Paper towels
- Incontinence supplies
- Other: ________________________________

10. Additional Services

☐ See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

☐ See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame: _________________________________. If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your
services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.

B. Source of payment for services covered by the daily/monthly rate:
   - Self-pay
   - Self-pay and billing to a third party: ___________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:
   - Self-pay
   - Other ___________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.
   - There is a security deposit. This security deposit will not exceed one month’s rent (currently $__________), and will be refunded to you within thirty (30) days from date of discharge/death.
   - The following costs may be deducted from the security deposit:
     ___________________________________________________________
     ___________________________________________________________
     ___________________________________________________________
     ___________________________________________________________

   - Security deposits are part of your separate lease with the Landlord.

G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.

   - In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.

   - In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.

IX. MODIFICATION OF CONTRACT TERMS
At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.

B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).

C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

- [ ] Manage own affairs
- [ ] Durable Financial Power of Attorney
- [ ] Health Care Power of Attorney
- [ ] Representative Payee
- [ ] Guardian
- [ ] Conservator
- [ ] Trustee
- [ ] Advance Directive/Living will
- [ ] Other

You agree to supply copies of all relevant information about those individuals who are responsible for your affairs as they relate to your care under this contract.

XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.
XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________

___________________________________
Signature of Provider Representative

___________________________________
Name of Provider

___________________________________
Address

___________________________________
Your Name

___________________________________
Your Signature or Signature of Your Agent

___________________________________
Address

___________________________________
Telephone Number
APPENDIX F

This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

D. Your Landlord is: _____________________________.

E. Your current monthly rent is: ________________.

F. Among other things, your lease provides that you will receive the following (check all that applies):

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

______________________________________________________
______________________________________________________

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other

D. Your lease is attached here for reference.
Level II Residential Care Facilities

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Section 1

Purpose

These rules establish minimum standards for the licensing of Level II Residential Care Facilities. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.
Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 “Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I – an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II – an assisted living program that provides, medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Nurse; and/or

2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.

2.11 “Assisted Living Services” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:
2.11.1 "Administration of medications" means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;

2.11.2 "Nursing services" means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

2.12 "Certified Nursing Assistant (CNA)" means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.13 "Certified Nursing Assistant/Medications (CNA-M)" means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.14 "Deficiency" means a violation of State licensing regulations.

2.15 "Dementia" means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather of symptoms that accompanies certain diseases and conditions. Such diseases can cause dementia as Alzheimer’s disease, Pick’s disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s disease, Huntington’s disease, Creutzfeldt-Jakob disease, multi-infarct dementia, etc.

2.16 "Department" means the Maine Department of Health and Human Services.

2.17 "Directed Plan of Correction" means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 "Distinct Part" means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

2.19 "Duly Authorized Licensed Practitioner" means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
2.20 “Emergency” means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 “Independent Housing with Services Program” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

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

2.29 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.

2.30 “Licensee” means the person to whom a license is issued.
2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.40 “Provider” means the licensee.

2.41 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.42 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.43 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.
2.44 "Registered Nurse" or "Registered Professional Nurse (hereinafter RN)" means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.

2.45 "Related by Blood or Marriage" means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.46 "Repeated Deficiency" means a violation of a rule more than once in a two (2) year period.

2.47 "Resident" means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.48 "Resident Rights" means those rights enumerated in Title 22 M.R.S.A. §7921 et seq. and 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also those enumerated in Section 5 of these regulations.

2.49 "Residential Care Facility" means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:

2.49.1 Level I – a facility with a licensed capacity of one (1) to two (2) residents.

2.49.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.49.3 Level III – a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.49.4 Level IV – a facility with a licensed capacity of more than six (6) residents.

2.50 "Residential Services Plan" means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.51 "Restraints" means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.51.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.51.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.
2.52 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person obtaining the medication for the individual.

2.53 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.54 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department, which describes deficiencies in complying with these regulations.

2.55 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department

2.56 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.57 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.58 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 Responsibility for compliance. The applicant/licensee shall comply with these regulations.

3.2 Unlicensed Level II residential care facility. No person, firm, partnership, association, corporation or other entity shall manage or operate a Level II residential care facility without a license.

3.3 Person license issued to. The license is only valid for the named licensee(s).

3.4 Application and licensure.

3.4.1 Application required. The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Residential Care Facilities - $10.00 each licensed.

3.4.2 Admission and scope of services policy. Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.

3.4.3 Additional licensing requirements. Prior to the issuance of a license and prior to re-licensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A residential care facility with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated there under, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);
3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing; and

3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq.

3.5 Requirement for bond. The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 Limitations on serving as legal representative. No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 Issuance of license. A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license.

3.8 Default licensing. If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

3.9 Number of licenses required. When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program or residential care facility; and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.
The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 Adult day services programs. When an adult day services program is physically located in an assisted living program or residential care facility, separate licenses shall not be required. The adult day services programs shall comply with the Regulations Governing the Licensing and Functioning of Adult Day Services Programs and licensed capacity will be reflected on the facility’s license.

3.11 Multilevel facility license. For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities; adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 Provisional license. The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.

3.13 Conditional license. The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.
3.14 **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program or residential care facility is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level II residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for a Level II Residential Care Facility license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.

3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

3.20.1 Issuance of a conditional license;

3.20.2 Refusal to issue or renew a license;
3.20.3 Revocation or suspension of a license; or
3.20.4 Refusal to issue a provisional license.

3.21 Renewal. A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;
3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 Actions requiring prior written approval. When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 Waivers. The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 Informal review of waiver denial. The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the department. See also Section 4.10 of these regulations.

3.25 Rates and contracts.

3.25.1 Rates. Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.
3.25.3 **Provisions of contract.** The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions, as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar days notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision, which provides for the payment of attorney fees or any other cost of collecting payments from the resident.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;

3.25.3.6.2 Tenancy obligations, if they exist;

3.25.3.6.3 Resident rights; and

3.25.3.6.4 Copy of the admissions policy.

3.25.3.7 The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:
3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of facility and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department’s toll-free telephone numbers for the following:

3.26.4.1 Office of Advocacy of the Office of Adults with Cognitive and Physical Disability Services and the Office of Adult Mental Health Services;

3.26.4.2 Adult Protective Services, Office of Elder Services; and

3.26.4.3 the Division of Licensing and Regulatory Services, Community Services Programs.

3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6 The program’s staff qualifications.

3.27 Information for residents of Alzheimer’s/dementia units. When a provider operates a unit meeting the requirements of a Designated Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;
3.27.5 A description of family involvement and the availability of family support programs;

3.27.6 A description of security measures provided by the facility;

3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

3.28 Refunds. Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.

3.29 Use of personal funds by operator. Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items, which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. (Class IV)

3.30 Tenancy obligation. Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.
3.31 Administrative and resident records.

3.31.1 Confidentiality. All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 Location of records. All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 Inspection of records. All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 Record retention. All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.

3.31.5 Storage of records. Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 Disaster plan. Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 Confidential information. Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 **Inspections required.** The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. *[Class I]*

4.2 **Frequency and type of inspections.** An inspection may occur:

4.2.1 Prior to the issuance of a license;

4.2.2 Prior to renewal of a license;

4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;

4.2.4 When there has been a change or proposed change in administrator, physical plant or services;

4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;

4.2.6 For routine monitoring of resident care; or

4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 **Licensing records kept by the department.** The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 **Complaints.** The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.

4.5 **Enforcement process.**

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.

4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.
4.5.3 Failure to correct any deficiency(ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.

4.5.4 **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program or residential care facility without a license;

4.6.2 Operation of an assisted living program or residential care facility over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3;

4.6.7 Failure to comply with 22 M.R.S.A. §7904- A (10) regarding time drills, as further described in Section 14.3.
4.7 Intermediate sanctions. The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

4.7.1 The assisted living program or residential care facility may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.

4.8 Financial penalties.

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision
based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.

### 4.8.5

The amount of any penalty to be imposed shall be calculated according to the following classification system:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Description</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.8.5.1 Class I</td>
<td>Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; Operation of an assisted living program or residential care facility over licensed capacity, or Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.</td>
<td>$6.00 per resident per occurrence per day</td>
</tr>
<tr>
<td>4.8.5.2 Class II</td>
<td>Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; Failure to submit a POC within ten (10) working day’s after receipt of an SOD; or Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.</td>
<td>$5.00 per resident per occurrence per day</td>
</tr>
<tr>
<td>4.8.5.3 Class III</td>
<td>The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3; The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.</td>
<td>$4.00 per resident per occurrence per day</td>
</tr>
</tbody>
</table>

### 4.8.6

The department may impose a penalty upon a licensee of a Level II residential care facility for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level II residential care facility.

### 4.8.7

Failure to comply with 22 M.R.S.A. §7904-A (6) regarding time drills, as further described in Section 14.3, commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

### 4.8.8

Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

#### 4.8.8.1

In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to
demonstrate that immediate full payment of the total amount due
would result in the interruption of the provision of necessary
services to residents.

4.8.8.2 In order to have a fine reduced, a provider must supply sufficient
information to the department to demonstrate that payment in full
would result in a permanent interruption in the provision of
necessary services to residents.

4.8.8.3 The department has the authority to determine whether the provider
has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the
department may refuse to issue or renew a license to operate an assisted living
program or residential care facility.

4.9.2 If, at the expiration of a full or Provisional license, or during the term of a full
license, the provider fails to comply with applicable laws and regulations, and, in
the judgment of the Commissioner, the best interest of the public would be served,
the department may issue a Conditional license, or change a full license to a
Conditional license. Failure by the licensee to meet the conditions specified by
the department shall permit the department to void the Conditional license or
refuse to issue a full license. The conditional license shall be void when the
department has delivered in hand or by certified mail a written notice to the
licensee, or, if the licensee cannot be reached for service in hand or by certified
mail, has left written notice thereof at the agency or facility. For the purposes of
this subsection the term “licensee” means the person, firm, or corporation or
association to whom a conditional license or approval has been issued.

4.9.3 Upon investigation, whenever conditions are found which, in the opinion of the
department, immediately endanger the health or safety of the persons living in or
attending the assisted living program or residential care facility, the department
may request that the District Court suspend the license on an emergency basis,
pursuant to Title 4 M.R.S.A. §184, subsection 6.

4.9.4 Any license may be suspended or revoked for violation of applicable laws or
regulations, committing, permitting, aiding or abetting any illegal practices in the
operation of the assisted living program or residential care facility, or conduct or
practices detrimental to the welfare of persons living in or attending the
facility/program. When the department believes a license should be suspended or
revoked, it shall file a complaint with the District Court as provided in the Maine
Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375 §10051.

4.9.5 Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition the
Superior Court to appoint a receiver to operate the assisted living program or
residential care facility in the following circumstances:
4.9.5.1 When the assisted living program or residential care facility intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;

4.9.5.2 When an emergency exists which threatens the health, security or welfare of residents; or

4.9.5.3 When the assisted living program or residential care facility is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.

4.10 Appeal rights. Any assisted living program or residential care facility aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of the Division of Licensing and Regulatory Services, Community Services Licensing, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.1 Issue a conditional license;

4.10.2 Amend or modify a license;

4.10.3 Void a conditional license;

4.10.4 Refuse to issue or renew a full license;

4.10.5 Refuse to issue a provisional license;

4.10.6 Stop or limit admissions;

4.10.7 Issue a directed POC;

4.10.8 Affirm or modify an Assessment of Penalties after an informal review;

4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or

4.10.10 Deny a request for a waiver of a rule.

4.11 Operating without a license

4.11.1 License required. A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level II residential care facility.

4.11.2 Civil penalty for operating without a license. A person, firm, partnership, association, corporation or other entity who operates a Level II residential care facility without a license commits a civil violation and is subject to a civil penalty
of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

4.11.3 **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.11.

4.11.4 **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.11.

4.11.5 **Jurisdiction.** The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.11.

4.11.6 **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.11 occurred.

4.11.7 **Right of entry.** To inspect the premises of a Level II residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.11.8 **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level II residential care facility with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.11. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.11.9 **Noninterference.** An owner or person in charge of an unlicensed Level II residential care facility may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

4.11.10 **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.11 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.11.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.11, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.
4.11.10.2 In an action under section 4.11, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

Resident Rights

5.1 **Resident rights.** The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices. [Class IV]

5.2 **Freedom of choice of provider.** For services and supplies not provided by the licensee each resident has the right to select the provider of his/her choice. [Class IV]

5.3 **Rights regarding transfer and discharge.** Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

   5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution; [Class IV]

   5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others; [Class IV]

   5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there; [Class IV]

   5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident; [Class IV]

   5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; [Class IV] or

   5.3.6 The license has been revoked, not renewed, or voluntarily surrendered. [Class IV]

5.4 **Transfer or discharge.** When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. [Class IV] Each notice must be written and include the following:

   5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; [Class IV]

   5.4.2 The effective date of the transfer or discharge; [Class IV]
5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of residential care facilities shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations lists advocacy services which may be available to residents. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. [Class IV]
5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the resident can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 Right to manage financial affairs. Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 Right to freedom from abuse, neglect or exploitation. Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 Rights regarding restraints and aversive conditioning. There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]

5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation and the Regulations Governing the Use of Restraints in Community Settings. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.11.3 For any resident who is a client of the Department of Health and Human Services Adult Mental Health Program (formerly known as the Department of Behavioral and Development Services (BDS)) due to his/her mental illness, the facility/program shall comply with the Rights of Recipients of Mental Health Services, promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.12 Right to confidentiality. Residents’ records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall
have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other person except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from the facility except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, children, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 **Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility. [Class IV]

5.14 **Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]

5.15 **Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 **Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 **Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 **Couples.** A couple residing in an assisted housing program has the right to share a room. [Class IV]
5.19 **Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services, which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 **Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident. [Class IV]

5.21 **Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 **Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to, Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]

5.23 **Notification of Residents Rights.** The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative, within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the change. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. [Class IV]

5.24 **Bill of rights for persons with mental retardation.** Facilities/programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

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

- Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. §19501 through §19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. §5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. §1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. §3470 through §3487.
Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

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

5.26 **Reasonable modifications and accommodations**. To afford individuals with disabilities the opportunity to reside in an assisted living program, the provider shall:

5.26.1 Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]

5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 **Right of action**. In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 **Right to appeal an involuntary transfer or discharge**. The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the facility unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director of the Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. [Class IV]
5.29 **Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations.  [Class IV]

5.30 **Resident councils**

5.30.1 Residents of assisted living programs and residential care facilities have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:

5.30.3.1 To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved;  [Class IV]

5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights;  [Class IV]

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement;  [Class IV]

5.30.3.4 To help identify residents' problems and recommend ways to ensure early resolution;  [Class IV]

5.30.3.5 To inform the administrator of the opinions and concerns of the residents;  [Class IV]

5.30.3.6 To find ways of involving the families and residents of the facility;

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and  [Class IV]

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request.  [Class IV]

5.31 **Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies.  [Class IV]
Section 6

Alzheimer’s/Dementia Unit Standards

6.1 Alzheimer’s/Dementia Care Units. A facility or unit may be designated as an Alzheimer’s/Dementia Care Unit if the following regulations are met and the facility has received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer’s/Dementia unit, the resident’s individual record must contain:

   6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

   6.2.1.2 Documentation of a physician’s diagnosis of Alzheimer’s disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

   6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimer’s/dementia care unit shall have;

       6.3.1.1 Adequate space for dining, group and individual activities and family visits;

       6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways, which allow residents to ambulate, but prevent undetected egress;

       6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

       6.3.1.4 Non-reflective floors, walls and ceilings;

       6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and
6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 **Physical environment.** The designated Alzheimer’s/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 **Physical Safety.**

6.3.3.1 The designated Alzheimer’s/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.
6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimer’s/Dementia Care Units. All facilities with Alzheimer’s/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);
6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);
6.4.3 Social activities (e.g., games, music, reminiscing, etc.);
6.4.4 Crafts (e.g., decorations, pictures, etc.);
6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);
6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and
6.4.7 Spiritual activities.

6.5 Pre-service training for Alzheimer’s/Dementia Care Units. For pre-service training, all facilities with Alzheimer’s/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer’s disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer’s Disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer’s Disease and related dementias;
6.5.2 Communication basics;
6.5.3 Creating a therapeutic environment;
6.5.4 Activity focused care;
6.5.5 Dealing with difficult behaviors; and
6.5.6 Family issues.
Section 7

Medications and Treatments

7.1 **Use of safe and acceptable procedures.** The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. *[Classes I/II/III]*

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. *[Classes I/II/III]*

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4 If a resident has Diabetes, unlicensed persons must be trained by a registered professional nurse in regard to the management of persons with diabetics. The registered professional nurse must provide in-service training and documentation to include: Documentation of training shall be included in the employee record. *[Class III]*

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation including signs/symptoms;

7.1.4.6 Treatment and prevention of insulin reaction;

7.1.4.7 Foot care;

7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and
7.1.9 Standard Precautions.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.2 Self-administration of medications. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner, and a facility representative.

7.3 Medication storage. Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. [Class III]

7.4 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments, and/or use of medical equipment not specifically outlined in these Regulations, there must documentation in the employee file.

7.5 Whenever employees are in serviced or taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
Section 8

Verification of Credentials

8.1 **Licensed Staff.** Prior to employing licensed staff, the facility must verify that the licensed person has a valid and current license.

8.7 **Employing CNA's and CNA-M's.** Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or if the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.

8.8 **Prohibited Employment.** The facility may not hire as unlicensed assistive personnel as defined in section 2.57 an individual who is prohibited from employment as a certified nursing assistant as outlined below and in section 8.4:

8.8.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.8.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.8.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.8.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants.

8.9 **Time Limit on Consideration of Prior Criminal Conviction:** Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

8.9.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;
8.9.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.10 Exception: The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.

8.11 Notification: A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Scope of Licenses

9.1 Licensing of facilities with three (3) to six (6) residents. A license is required for more than two residents. A Level II license may be issued to a residential care facility with 3-6 beds if the provider has fewer than three (3) employees who are not owners nor related to the owner, as long as the requirements of these rules are met.

9.2 Exemptions for licensed children’s homes. The Department may exempt a licensed children’s home from requiring a Level II license once a resident reaches the age of eighteen (18) if the resident has not completed his/her prescribed program of treatment, care or education, or discharge from the facility will occur within nine (9) months of the date the resident turned eighteen (18). If the facility’s purpose is to treat or care for children, and the above requirements are met, the Department may grant a written exemption from licensure in order for the adult resident’s income to be supplemented.

9.3 Dual licensure. No facility shall be granted a Level II license, and any previously granted Level II license may be subject to revocation, if another license or approval is in effect or granted, unless the Department has determined that dual licensure will not have an adverse impact on the residents.

9.4 Maximum number of adult residents. The maximum number of beds for which a facility may be licensed will be determined by the Department, according to the regulations set forth herein. Respite care may only be provided in licensed beds.

9.5 Physical plant changes. No alterations in the size or arrangement of the physical plant, location or number of resident rooms or beds, change in the heating system, water supply system, sewage disposal system, utilities or similar systems shall be made without the prior written approval of the Department in accordance with these regulations.

9.6 Residents under the age of 18. A person who is seventeen (17) years of age may be a resident of a Level II facility without the home being required to be licensed as a children’s home, if the Department determines in writing prior to placement that such a placement is in the best interest of that person. The general physical and mental health of all residents of the facility shall be considered in this decision.
Section 10

Provider and Staff Qualifications and Responsibilities

10.1 Provider's age. The provider shall be at least twenty-one (21) years of age. [Class III]

10.2 Education, experience and training. The provider shall submit satisfactory evidence regarding education, experience and training to meet the needs of the residents to be served.

10.3 Qualifications of the provider. The provider must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. In making this determination, the Department may consider:

10.3.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the provider.
10.3.2 Understanding of and compliance with resident rights.
10.3.3 Any information reasonably related to the ability to provide safe and compassionate services.

10.4 Operating cash flow. Upon initial application, the provider shall give evidence of income or cash flow to meet the expenses of the facility for at least the first two (2) months. This may include such evidence as a line of credit or liquid assets.

10.5 Responsibilities. The provider is responsible for the overall operation of the facility and shall:

10.5.1 Ensure that staff are qualified, adequately trained and competent and are performing their duties consistent with all regulations and provisions of law;

10.5.2 Make work assignments according to the qualifications of staff and the number and needs of the residents; and

10.5.3 Assure that each resident’s abilities and needs are adequately assessed and that each resident is offered all necessary services.

10.5.4 For all facilities initially licensed on or after the effective date of these regulations, provide office space, adequate in size and providing privacy to complete and store required records.

10.6 Qualifications of other staff. Other caregivers must meet the following standards:

10.6.1 Any person who is given supervisory responsibility over residents must be a capable and dependable person at least eighteen (18) years of age, who is not a resident. Such a person, or the provider, will be available whenever a resident is in the facility. A record of the name, address and telephone number of persons who provide supervision in the absence of the provider shall be kept on file in the facility and shall be made available to the Department upon request. This person will be instructed regarding evacuation procedures for the facility. [Level I, II, III, IV]
10.6.2 Residential care staff shall attend and show evidence of successful completion of any training that the Department determines to be necessary.

10.6.3 No provider shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease that would threaten the health and welfare of the residents, unless Standard Precautions reduce or eliminate exposure or risk to the residents. [Class I, II, III, IV]

10.7 Consultation services.

10.7.1 Pharmacist consultant services. The Department reserves the right to require pharmacist consultation in the event that serious or multiple deficiencies in medication administration are noted.

10.7.2 Registered nurse consultant services. The Department reserves the right to require licensed nurse consultation in the event that serious or multiple deficiencies in the health care of residents are noted.

10.7.3 Consultant dietitian services. The Department reserves the right to require a qualified consultant dietitian in the event that serious or multiple deficiencies in food service are noted.
Section 11

Health Care and Access to Services

11.1 Medical and health care. The provider shall coordinate appropriate health care services and assist residents to access them. Each resident shall have access to a duly authorized licensed practitioner of his/her choice. Each resident shall have an annual physical, unless otherwise specified by his/her duly authorized licensed practitioner. [Class II]

11.2 Transportation. The facility shall provide or arrange transportation to medical and other appointments.

11.3 First aid kit. A first aid kit containing supplies for treatment of minor injuries, such as cuts, scrapes or first-degree burns, shall be available in the facility. All staff shall be instructed in the use of any item in the kit.

11.4 Nursing services. Nursing services are to be provided by professional nurses pursuant to Title 32 M.R.S.A. §2102, subsection 2. This includes coordination and oversight of assisted living services by unlicensed assistive personnel.
Section 12

Management of Resident Personal Accounts

12.1 **Written permission.** The licensee or his/her representative may only manage personal accounts for a resident if requested to do so, in writing, by the resident or the resident’s legal representative.

12.2 **Documentation.** The provider must maintain and document an accounting of the funds, with supporting documentation for each expenditure that exceeds $2.00.

Under no circumstances shall the personal funds of any resident, beyond what the provider receives for monthly payments, be used for the operating costs of the facility or the personal expenses of the provider or his/her representative.

12.3 **Commingling.** Residents’ personal funds shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility.
Section 13

Resident and Other Records

13.1 Summary sheets. There shall be a summary sheet maintained for each resident that includes applicable information, including the resident’s name, birth date, date of admission, duly authorized licensed practitioner’s name, address and telephone number, nearest relative or friend’s name, address and telephone number, person to be notified in an emergency, their name, address and telephone number, day program name, telephone number, address and contact person, date of discharge or death and significant medical/social issues.

13.2 Resident records. There shall be a record maintained for each resident that contains applicable information on physical and mental condition, behavior, mood, eating habits, incidents or accidents, documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, and the dates of medical examinations, other medical and dental treatment and drugs prescribed.

13.3 Discharge summary. Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall include, but not be limited to the following:

13.3.1 Reason for discharge; and

13.3.2 Targeted living arrangement.

13.4 Record of personal property. The provider shall maintain a list of each resident’s property including items of personal value.

13.5 Employee records for a corporation, partnership, association or an entity other than an individual. For any provider that is a corporation, partnership, association or an entity other than an individual, the Department may request that reasonable personnel policies and records be kept documenting that employees have been trained and are competent and performing their duties consistent with these regulations.
Section 14

Safety Standards

14.1 Fire safety plans. Each facility must have a fire safety plan. The fire safety plan and any changes in the plan are to be developed in conjunction with and approved by, local or state fire authorities. [Class III]

14.2 Elements of a fire safety plan. In addition to any requirements of local or state fire authorities, the plan shall note steps to be taken, location of emergency exits, evacuation procedures and the telephone numbers of police, fire, ambulance and duly authorized licensed practitioners or other individuals to contact in an emergency. The fire safety plan shall be posted conspicuously in the facility.

14.3 Drills or rehearsals.

14.3.1 Timed drills, as described in the applicable chapters of the NFPA Life Safety Code, must be used in facilities with 3 or more beds to determine a facility’s capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the NFPA Life Safety Code 101A or when timed drills are not required pursuant to the Life Safety Code. When a new resident has participated in a timed drill in another residential care facility within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident’s current facility for a period of up to 4 months. [Class II]

14.3.2 Facilities with 3 or more beds shall conduct drills or rehearsals of the emergency steps to be taken at irregular times of the day, at least 6 (six) times per year spaced throughout the year. Two of the six drills must be conducted while residents are asleep. [Class II]

14.4 Record of drills or rehearsals. A record shall be kept on a form provided by the Department showing the date and time of each drill. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. [Class II]

14.5 Free-standing, solid fuel burning stoves. Freestanding, solid fuel burning stoves (including wood and coal) are permitted in living areas, but not in bedrooms. They must be installed within NFPA No. 211 guidelines or as regulated by the Solid Fuel Board of Maine. Guidelines contained in NFPA No. 211 may be obtained by contacting the Office of the State Fire Marshal. [Class III]

14.6 Portable electric heaters. Portable closed liquid electric heaters may be used if approved by the Office of the State Fire Marshal. No radiant or quartz heaters shall be used. [Class III]

14.7 Extension cords. Extension cords are prohibited, except for those cords that have a fuse mechanism. [Class III]
14.8 **Smoke detectors.** Smoke detectors shall be functional at all times. *[Class I]*
Section 15

Nutrition and Health

15.1 **Quality and quantity of food.** The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

15.2 **Resident participation in meal planning and preparation.** Residents shall be encouraged to participate in food planning and preparation, as appropriate.

15.3 **Second-grade products.** Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods shall not be used. *(Class III)*

15.4 **Food supplies.** Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.

15.5 **Residents with communicable diseases.** No resident with a communicable disease shall be admitted if that resident's condition or behavior endangers the health and welfare of other residents and no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.
Section 16

Living Area and Sleeping Accommodations

16.1 Living and dining areas. Residents shall be provided an area for dining and relaxation sufficient in size to accommodate the provider’s family and the residents. Comfortable, non-folding chairs must be provided. The rooms shall be well lighted and free of hazards. A television set for use by the residents shall be available.

16.2 Bedrooms.

16.2.1 For facilities initially licensed on or after May 29, 1998, a minimum of one hundred (100) square feet of usable floor space shall be provided in a single bedroom. A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.2 For all facilities initially licensed before May 29, 1998, a minimum of eighty (80) square feet of usable floor space shall be provided in a single bedroom. A minimum of seventy (70) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.3 Usable floor space shall be calculated only for that floor space having a ceiling height of a minimum of six (6) feet, except as provided in Section 16.2.4. Corridors, passageways, vestibules, alcoves, closets and wardrobe space shall be excluded from the calculations of usable floor space.

16.2.4 Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) may be counted toward usable floor space for the room.

16.2.5 There shall be no more than two (2) people in each room. Couples who are both residents of the facility have the right to share a room.

16.2.6 Each resident bedroom shall have a solid door that can be closed for privacy.

16.2.7 Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum required floor space per Sections 16.2.1 and 16.2.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. In air-conditioned buildings, at least one window in each room must be able to be opened.
16.2.8 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident bedroom. No resident room shall be used for access to other rooms or corridors. [Class III]

16.2.9 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing.

16.2.10 Each resident shall be offered a bed and mattress that is at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds do not meet this requirement.

16.2.11 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected.

16.2.12 For each bed there shall be offered:

16.2.12.1 At least two (2) dresser drawers;
16.2.12.2 A comfortable non-folding chair in good repair;
16.2.12.3 A bedside table; and
16.2.12.4 A reading lamp.

16.2.13 The facility shall permit and encourage residents to use their own furnishings, space permitting.

16.2.14 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair.

16.2.15 There must be a direct source of heat to each bedroom.

16.2.16 There shall be an adequate towel, linen and bedding supply in addition to those in use, so that a complete linen change is available in the facility at all times.

16.2.17 Residents shall not share bedrooms with members of the provider’s family who are not receiving assisted living services, unless the facility obtains written permission from the Department. Permission will be granted if the arrangement is in the resident’s best interest and is acceptable to the resident or the resident’s guardian or conservator.

16.3 Renting space. The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.
Section 17

Sanitation and Safety

17.1 Maintenance. The facility must be kept clean and shall be maintained in a condition ensuring the health and safety of residents. All refuse collected in common areas or from resident’s rooms shall be stored in cleanable, rodent-proof, covered containers, pending removal. [Class III]

17.1.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

17.1.2 The administrator shall take immediate steps to correct any condition, in the physical facility or on the premises, which poses a danger to a resident’s life, health and/or safety. [Classes II/III]

17.2 Insect and rodent control. There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. Doors and windows used for ventilation must be screened.

17.3 Food safety and sanitation. Food shall be stored, prepared and served in a safe and sanitary manner. [Class III]

17.3.1 Kitchen and food preparation areas shall be located away from possible food contamination sources. [Class III]

17.3.2 Kitchen and food preparation areas must be clean, and food stored so as to be free from spoilage and contamination. [Class III]

17.3.3 All equipment, dishes, glassware and cooking utensils shall be in good repair. [Class III]

17.3.4 Refrigerator temperature shall not exceed forty-one degrees (41°) Fahrenheit. [Class II]

17.4 Bathrooms. Bathrooms must be safe, sanitary and in good repair.

17.4.1 Adequate indoor bathing and flush toilet facilities for the number of residents in the facility must be provided. For all facilities licensed on or after the effective date of these regulations, a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available.
17.4.2 Bathing facilities shall afford privacy.

17.4.3 If a resident needs grab bars to bathe safely, a bathing facility equipped with grab bars that meet the Americans with Disabilities Act standards will be required.

17.4.4 Facilities shall supply a sanitary means for washing and drying hands in bathrooms.

17.5 **Telephone.** There must be a listed telephone available to all residents.

17.6 **Heat.** Resident areas of the facility shall be maintained at a temperature of, at least, seventy degrees (70°) Fahrenheit or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. *[Class III]*

17.7 **Hot water.** Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. *[Class III]*

17.8 **Exits.** In facilities licensed prior to June 1, 1989, there must be at least two (2) usable exits that are remote from each other. In facilities initially licensed on or after June 1, 1989, there must be at least two (2) usable exit doors that are remote from each other. Exits must be clear of obstructions. *[Class III]*

17.9 **Handrails.** Inside and outside stairs are required to have handrails. Handrails on each side of the stairs may be required to meet the needs of residents. *[Class III]*

17.10 **Private water supply.** A private water supply shall be tested annually and a satisfactory result obtained. The Department will furnish the applicant with forms for water testing which must be submitted to the Division of Health Engineering. No license shall be issued to a facility that does not get its water from a municipal water system until:

17.10.1 A water analysis report has been obtained, indicating that the water supply meets the standards of the Division of Health Engineering, Department of Health and Human Services; or

17.10.2 An alternative source of water that meets those standards will be used until a satisfactory water analysis report is obtained. The alternate water source must be approved in writing by the Department. *[Class III]*

17.11 **Poisonous and toxic materials.** When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. *[Class III]*
17.12 Animals. There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly. [Class III]

17.13 Dryer ventilation. Dryers shall be vented to the exterior of the building. [Class III]
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED
June 1, 2006 [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _________________________________ (hereinafter “the Provider”) and you, ___________________________________. This contract describes your financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a customized addendum but these additional provisions may not conflict with or replace the use of the standard contract. The intent of having a standard contract in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you and the Provider agree as follows:

I STANDARDS

The Provider will help to further your independence and respect your privacy and personal choices, including your choice to continue to reside here for as long as the Provider and program, as it is fundamentally designed, is able to meet your needs. The Provider’s programs will be consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services, the Provider will assist you in making other arrangements including moving somewhere else, if necessary.

II PROVIDER LICENSE

The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the ____________. This Provider is licensed as follows (check one):

☐ Level I Residential Care Facility
☐ Level II Residential Care Facility
☐ Level III Residential Care Facility
☐ Level IV Residential Care Facility
☐ Level I PNMI Residential Care Facility
☐ Level II PNMI Residential Care Facility
☐ Level III PNMI Residential Care Facility
☐ Level IV PNMI Residential Care Facility
☐ Type I Assisted Living Program
☐ Type II Assisted Living Program

☐ This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of
the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

III APPENDICES

The following Appendices are attached and made a part of this contract:

- Appendix A: Admissions Policy
- Appendix B: Your Rights
- Appendix C: Grievance Policy
- Appendix D: Tenancy Obligations (check if this applies)
- Appendix E: Additional terms in Customized Addendum (check if this applies)
- Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider

IV ADMISSION POLICY

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

V SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE

A. You agree to purchase:

- [ ] Housing and Services.
- [ ] Housing Only.

B. You agree to pay the following current rate to the Provider:

- [ ] Daily rate of $________
- [ ] Monthly rate of $________
- [ ] The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

The landlord is ________________________________.

The amount of your current monthly rent is ____________.

D. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:
7. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
8. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and
9. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:

1. **Personal Supervision.**
   - [ ] Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
   - [ ] Staff will accompany you to medical appointments
   - [ ] The Provider provides an escort for regular travel
   - [ ] The Provider has qualified staff in the building 24-hours/day
   - [ ] Other
   - [ ] Additional provisions: See Appendix E

2. **Assistance with activities of daily living.** (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)
   - [ ] Walking
   - [ ] Changing position in bed
   - [ ] Transferring from place to place
   - [ ] Dressing
   - [ ] Eating
   - [ ] Using the bathroom
   - [ ] Bathing
   - [ ] Personal hygiene, such as help washing your hair
   - [ ] Other
   - [ ] Additional Provisions: See Appendix E

3. **Incidental activities of daily living.**
   - [ ] Using the telephone
   - [ ] Handling your finances
   - [ ] Banking
   - [ ] Shopping
   - [ ] Light housekeeping
   - [ ] Heavy housekeeping
   - [ ] Getting to appointments
   - [ ] Barber/beautician services
   - [ ] Other
   - [ ] Additional Provisions: See Appendix E

4. **Medication assistance.**
   - [ ] Obtaining medications from the Pharmacy of your choice:______________________________.
   - [ ] Ordered by Provider
Delivered by the Pharmacy
Ordered by you/family member
Picked up by Provider
Picked up by you/family member

Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)

Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for example, information that they have been administered at the right time and in the right dose

Other ____________________________

Additional Provisions: See Appendix E

5. Food Service.

Meal preparation (including the cost of food) ______ times each day
Meal preparation (food purchased separately by you) ______ times each day
Nutritious between-meal snacks ______ times each day
Special diets ordered by your physician as follows:

Shopping for groceries you purchase
Meal planning
Other ____________________________

Additional Provisions: See Appendix E

6. Transportation services.

Arranging transportation (cost of transportation included) ______ miles roundtrip
Arranging transportation (cost of transportation not included)
Transportation without escort to medical appointments within ________ miles roundtrip
Transportation with escort to medical appointments within ________ miles roundtrip
Other ____________________________

7. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:

None
Skilled nursing services provided by a registered professional nurse.
Registered professional nurse who oversees staff and coordinates your health care needs.

8. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

All housing costs (there will be no extra charges)
All housing costs except:

__________________________________________
9. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

- None
- Non-prescription analgesics and antacids
- Bedroom furnishings: ______________________________________
- Pillows, sheets, linens, towels
- Laundry supplies and equipment
- Laxatives
- Thermometers
- Non-prescription skin creams/lubricants
- Mouthwash
- Toothpaste
- Other non-prescription ointments: ______________________
- Shampoo
- Soap
- Facial tissue
- Toilet tissue
- Paper towels
- Incontinence supplies
- Other: ___________________________________________________

10. Additional Services

- See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

- See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame:
If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.

B. Source of payment for services covered by the daily/monthly rate:
   - Self-pay
   - Self-pay and billing to a third party: __________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:
   - Self-pay
   - Other ______________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.
   - There is a security deposit. This security deposit will not exceed one month’s rent (currently $____________), and will be refunded to you within thirty (30) days from date of discharge/death.
   - The following costs may be deducted from the security deposit:
     _____________________________________________________________
     _____________________________________________________________

   - Security deposits are part of your separate lease with the Landlord.

G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.
   - In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.
   - In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.
IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.

B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).

C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

- [ ] Manage own affairs
- [ ] Durable Financial Power of Attorney
- [ ] Health Care Power of Attorney
- [ ] Representative Payee
- [ ] Guardian
- [ ] Conservator
- [ ] Trustee
- [ ] Advance Directive/Living will
- [ ] Other

You agree to supply copies of all relevant information about those individuals who are responsible for your affairs as they relate to your care under this contract.

XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.
XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________

___________________________________
Signature of Provider Representative

___________________________________
Name of Provider

___________________________________
Address

___________________________________
Telephone Number
APPENDIX F

This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

G. Your Landlord is: ____________________________.

H. Your current monthly rent is: ____________________.

I. Among other things, your lease provides that you will receive the following (check all that applies):

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

____________________________________________________
____________________________________________________

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other

D. Your lease is attached here for reference.
TDD 1-800-606-0215
dlrs.info@maine.gov
**Level III Residential Care Facilities**

**Section 1. PURPOSE**

**Section 2. DEFINITIONS**

**Section 3. LICENSING**

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| Unlicensed facilities          | 1 |
| Person license issued to       | 1 |
| Application and licensure      | 1 |
| Application required           | 1 |
| Admission and scope of services policy | 1 |
| Additional licensing requirements | 1 |
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| Limitations on serving as legal representative | 2 |
| Issuance of license            | 2 |
| Default licensing              | 2 |
| Number of licenses required    | 2 |
| Adult Day Services Programs    | 3 |
| Multilevel facility license    | 3 |
| Provisional license            | 3 |
| Conditional license            | 4 |
| Transfer of licenses           | 4 |
| Term of license                | 4 |
| Reapplications                 | 4 |
| Posting the license            | 4 |
| Right of entry                 | 4 |
| Filing Plans of Correction     | 4 |
| Reapplication subsequent to licensing actions | 4 |
| Renewal                        | 5 |
| Actions requiring prior written approval | 5 |
| Waivers                       | 5 |
| Informal review of waiver denial | 5 |
| Rates and contracts            | 5 |
| Rates                         | 5 |
| Signing a contract             | 5 |
| Provisions of contract         | 6 |
| Information to residents       | 7 |
| Information for Residents of Alzheimer’s/Dementia Units | 7 |
| Refunds                       | 8 |
| Use of personal funds by operator | 8 |
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| Administrative and resident records | 8 |
| Confidentiality                | 9 |
| Location of records            | 9 |
| Inspection of records          | 9 |
| Record retention               | 9 |
| Storage of records             | 9 |
| Disaster plan                  | 9 |
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- Frequency and type of inspections ........................................ 1
- Licensing records kept by the Department ................................ 1
- Complaints .............................................................................. 1
- Enforcement process ............................................................. 1
- Informal conference ............................................................... 2
- Grounds for intermediate sanctions ....................................... 2
- Intermediate sanctions ......................................................... 2
- Financial penalties .................................................................. 3
- Other sanctions for failure to comply .................................... 5
- Appeal rights .......................................................................... 6
- Operating without a license .................................................... 6

Section 5. RESIDENT RIGHTS

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- Freedom of choice of provider ................................................ 1
- Rights regarding transfer and discharge ................................ 1
- Transfer or discharge ............................................................... 1
- Emergency transfer or discharge .......................................... 2
- Leaves of absence .................................................................... 2
- Assistance in finding alternative placement ............................ 2
- Right to communicate grievances and recommend changes .... 2
- Right to manage financial affairs .......................................... 3
- Right to freedom from abuse, neglect or exploitation ............ 3
- Rights regarding restraints and aversive conditioning ........... 3
- Right to confidentiality ............................................................ 4
- Right to refuse to perform services for the facility ................ 4
- Right to privacy and consideration ......................................... 4
- Right to communicate privately with persons of choice ......... 4
- Right to participate in activities of choice ............................... 4
- Right to personal clothing and possessions ........................... 4
- Couples ............................................................................... 4
- Right to be informed of services provided by the facility/program 4
- Right to refuse treatment or services ..................................... 5
- Right to be free from discrimination ....................................... 5
- Right to information regarding deficiencies .......................... 5
- Notification of Residents Rights ............................................. 5
- Bill of rights for persons with mental retardation .................. 5
- Mandatory report of rights violations ................................. 5
- Reasonable modifications and accommodations .................. 6
- Right of action ...................................................................... 6
- Right to appeal an involuntary transfer or discharge ............ 6
- Resident adjudicated incompetent ........................................ 7
- Resident councils ................................................................. 7
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Physical design ....................................................................................... 1
Physical environment ............................................................................. 2
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Section 7. MEDICATIONS AND TREATMENTS

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Administration of medications ............................................................... 2
Self administration ................................................................................ 2
Medication administered by facility ....................................................... 2
Unlicensed assistive personnel ............................................................... 3
PRN medications .................................................................................... 3
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Medication storage ................................................................................. 4
Temporary absences .............................................................................. 4
Medication labeling ............................................................................... 5
Improperly labeled medications ........................................................... 5
Expired and discontinued medications .................................................. 5
Medication owned by residents ............................................................. 5
Destroying medications ........................................................................ 5
Schedule II controlled substances ......................................................... 5
Bulk supplies ......................................................................................... 6
Medication/treatment administration records ...................................... 6
Medication containers .......................................................................... 7
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Section 8. VERIFICATIONS OF CREDENTIALS

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Employing CNA’s and CNA-M’s ............................................................. 1
Prohibited Employment ........................................................................ 1
Time Limit on Consideration of Prior Criminal Conviction .................... 1
Exception ............................................................................................. 2
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Section 9. SCOPE OF LICENSES

Licensing of facilities with three (3) to six (6) residents ................................................................. 1
Exemptions for licensed children’s homes ..................................................................................... 1
Dual licensure ................................................................................................................................. 1
Maximum number of adult residents .......................................................................................... 1
Physical plant changes ................................................................................................................ 1
Residents under the age of 18 ...................................................................................................... 1

Section 10. PROVIDER AND STAFF QUALIFICATIONS AND RESPONSIBILITIES

Provider’s age ................................................................................................................................ 1
Education, experience and training .............................................................................................. 1
Qualification of the provider ......................................................................................................... 1
Operating cash flow ...................................................................................................................... 1
Providers responsibilities .............................................................................................................. 1
Qualifications of other staff .......................................................................................................... 1
Staffing levels ............................................................................................................................... 2
Nursing services .......................................................................................................................... 2
Consultation services ................................................................................................................ 2
Pharmacist consultant services ................................................................................................. 2
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Section 11. HEALTH CARE AND ACCESS TO SERVICES

Medical and Healthcare ................................................................................................................ 1
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Service plan ............................................................................................................................... 2
Progress notes .......................................................................................................................... 2
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Section 12. MANAGEMENT OF RESIDENT PERSONAL ACCOUNTS

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Documentation .......................................................................................................................... 1
Commingling ............................................................................................................................... 1

Section 13. RESIDENT AND OTHER RECORDS

Summary sheets .......................................................................................................................... 1
Resident records ......................................................................................................................... 1
Discharge summary .................................................................................................................. 1
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Employee records for a corporation, partnership, association or an entity other than an individual ...... 1
Section 14. SAFETY STANDARDS

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Elements of a fire safety plan ................................................................................................................... 1
Drills or rehearsals ................................................................................................................................... 1
Record of drill or rehearsals ..................................................................................................................... 1
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Portable electric heaters ........................................................................................................................... 1
Extension cords ........................................................................................................................................ 1
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Section 15. NUTRITION AND HEALTH

Quality and quantity of food .................................................................................................................... 1
Resident participation in meal planning and preparation .......................................................................... 1
Second-grade products ............................................................................................................................. 1
Food supplies ........................................................................................................................................... 1
Residents with communicable diseases .................................................................................................... 1

Section 16 LIVING AREA AND SLEEPING ACCOMMODATIONS

Living and dining areas ............................................................................................................................ 1
Bedrooms ................................................................................................................................................. 1
Renting space ........................................................................................................................................... 2

Section 17. SANITATION AND SAFETY

Cleanliness ............................................................................................................................................... 1
Insect and rodent control .......................................................................................................................... 1
Food safety and sanitation ........................................................................................................................ 1
Bathrooms ............................................................................................................................................... 1
Telephone ................................................................................................................................................. 2
Heat ....................................................................................................................................................... 2
Hot water ............................................................................................................................................... 2
Exits ......................................................................................................................................................... 2
Handrails ............................................................................................................................................... 2
Private water supply ................................................................................................................................ 2
Poisonous and toxic materials .................................................................................................................. 2
Animals ..................................................................................................................................................... 3
Dryer ventilation ..................................................................................................................................... 3

Statutory Authority .................................................................................................................................. A
Section 1

Purpose

These rules establish minimum standards for the licensing of Level III Residential Care Facilities. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.
Section 2

Definition

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 “Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I – an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II – an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Professional Nurse; and/or

2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.

2.11 “Assisted Living Services” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:
2.11.1 “**Administration of medications**” means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;

2.11.2 “**Nursing services**” means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

2.12 “**Certified Nursing Assistant (CNA)**” means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.13 “**Certified Nursing Assistant/Medications (CNA-M)**” means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.14 “**Deficiency**” means a violation of State licensing regulations.

2.15 “**Dementia**” means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

2.16 “**Department**” means the Maine Department of Health and Human Services.

2.17 “**Directed Plan of Correction**” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 “**Distinct Part**” means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

2.19 “**Duly Authorized Licensed Practitioner**” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
2.20 “Emergency” means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 “Independent Housing with Services Program” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

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

2.29 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.

2.30 “Licensee” means the person to whom a license is issued.
2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.40 “Provider” means the licensee.

2.41 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.42 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.43 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.44 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.
2.45 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.46 “Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.

2.47 “Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.48 “Resident Rights” means those rights enumerated in Title 22 M.R.S.A. §7921 et seq. and 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also they’re enumerated in Section 5 of these regulations.

2.49 “Residential Care Facility” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:

2.49.1 Level I – a facility with a licensed capacity of one (1) to two (2) residents.

2.49.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.49.3 Level III – a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.49.4 Level IV – a facility with a licensed capacity of more than six (6) residents.

2.50 “Residential Services Plan” means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.51 “Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.51.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.51.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.
2.52 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person obtaining the medication for the individual.

2.53 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.54 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department which describes deficiencies in complying with these regulations.

2.55 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department

2.56 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.57 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.58 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 **Responsibility for compliance.** The applicant/licensee shall comply with these regulations.

3.2 **Unlicensed Level III residential care facility.** No person, firm, partnership, association, corporation or other entity shall manage or operate a Level III residential care facility without a license.

3.3 **Person license issued to.** The license is only valid for the named licensee(s).

3.4 **Application and licensure.**

3.4.1 **Application required.** The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Residential Care Facilities - $10.00 each licensed bed.

3.4.2 **Admission and scope of services policy.** Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.

3.4.3 **Additional licensing requirements.** Prior to the issuance of a license and prior to relicensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A residential care facility with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated thereunder, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);
3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing; and

3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq.

3.5 Requirement for bond. The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 Limitations on serving as legal representative. No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 Issuance of license. A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license.

3.8 Default licensing. If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

3.9 Number of licenses required. When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program or residential care facility; and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.
The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 **Adult day services programs.** When an adult day services program is physically located in an assisted living program or residential care facility, separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the license.

3.11 **Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities, adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 **Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.
3.13 **Conditional license.** The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.

3.14 **Transfer of licenses.** No license may be transferred and is not applicable to any location or persons other than those specified on the license. When an assisted living program or residential care facility is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 "Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 "No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level III residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for a Level III Residential Care Facility license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.

3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:
3.20.1 Issuance of a conditional license;
3.20.2 Refusal to issue or renew a license;
3.20.3 Revocation or suspension of a license; or
3.20.4 Refusal to issue a provisional license.

3.21 Renewal. A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;

3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 Actions requiring prior written approval. When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 Waivers. The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 Informal review of waiver denial. The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of notice or receipt of the date of the informal review decision by writing to the department. See also Section 4.10 of these regulations.

3.25 Rates and contracts.

3.25.1 Rates. Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider
shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.

3.25.3 **Provisions of contract.** The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions, as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements:

- **3.25.3.1** No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.
- **3.25.3.2** No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.
- **3.25.3.3** Each contract shall provide for at least thirty (30) calendar days notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.
- **3.25.3.4** No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.
- **3.25.3.5** No contract may contain a provision, which provides for the payment of attorney fees or any other cost of collecting payments from the resident.
- **3.25.3.6** The following shall be appended to the contract and made a part thereof:
  - **3.25.3.6.1** Grievance procedure;
  - **3.25.3.6.2** Tenancy obligations;
  - **3.25.3.6.3** Resident rights; and
  - **3.25.3.6.4** Copy of the admissions policy.
- **3.25.3.7** The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of
the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of facility and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;

3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6 The program’s staff qualifications.

3.27 Information for residents of Alzheimer’s/dementia units. When a provider operates a unit meeting the requirements of a Designated, or any other authorized representative Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

3.27.5 A description of family involvement and the availability of family support programs;
3.27.6 A description of security measures provided by the facility;

3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

3.28 Refunds. Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.

3.29 Use of personal funds by operator. Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items, which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. (Class IV)

3.30 Tenancy obligation. Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

3.31 Administrative and resident records.

3.31.1 Confidentiality. All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 Location of records. All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 Inspection of records. All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 Record retention. All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.
3.31.5 Storage of records. Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 Disaster plan. Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 Confidential information. Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 Inspections required. The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. [Class I]

4.2 Frequency and type of inspections. An inspection may occur:

4.2.1 Prior to the issuance of a license;

4.2.2 Prior to renewal of a license;

4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;

4.2.4 When there has been a change or proposed change in administrator, physical plant or services;

4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;

4.2.6 For routine monitoring of resident care; or

4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 Licensing records kept by the department. The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 Complaints. The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.

4.5 Enforcement process.

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.

4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.
4.5.3  Failure to correct any deficiency(ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.

4.5.4  **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of Division of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6  **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1  Operation of an assisted living program or residential care facility without a license;

4.6.2  Operation of an assisted living program or residential care facility over licensed capacity;

4.6.3  Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4  Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5  Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6  Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.

4.7  **Intermediate sanctions.** The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

4.7.1  The assisted living program or residential care facility may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.
4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.

4.8 Financial penalties.

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.
4.8.5 The amount of any penalty to be imposed shall be calculated according to the following classification system:

4.8.5.1 Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1;
Operation of an assisted living program or residential care facility over licensed capacity, or
Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.

4.8.5.2 Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2;
Failure to submit a POC within ten (10) working days after receipt of an SOD; or
Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.

4.8.5.3 The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3;
The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.

4.8.6 The department may impose a penalty upon a licensee of a Level III residential care facility for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level III residential care facility.

4.8.7 Failure to comply with 22 M.R.S.A. §7904-A (6) regarding time drills, as further described in Section 14.3 commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

4.8.8.1 In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.
4.8.8.2 In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.

4.8.8.3 The department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program or residential care facility.

4.9.2 If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

4.9.3 Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program or residential care facility, the department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184, subsection 6.

4.9.4 Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program or residential care facility, or conduct or practices detrimental to the welfare of persons living in or attending the facility/program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375 §10051.

4.9.5 Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition the Superior Court to appoint a receiver to operate the assisted living program or residential care facility in the following circumstances:

4.9.5.1 When the assisted living program or residential care facility intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;
4.9.5.2 When an emergency exists which threatens the health, security or welfare of residents; or

4.9.5.3 When the assisted living program or residential care facility is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.

4.10 Appeal rights. Any assisted living program or residential care facility aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of the Division of Licensing and Regulatory Services, Community Services Programs and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.1 Issue a conditional license;
4.10.2 Amend or modify a license;
4.10.3 Void a conditional license;
4.10.4 Refuse to issue or renew a full license;
4.10.5 Refuse to issue a provisional license;
4.10.6 Stop or limit admissions;
4.10.7 Issue a directed POC;
4.10.8 Affirm or modify an Assessment of Penalties after an informal review;
4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or
4.10.10 Deny a request for a waiver of a rule.

4.11 Operating without a license

4.11.1 License required. A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level III residential care facility.

4.11.2 Civil penalty for operating without a license. A person, firm, partnership, association, corporation or other entity who operates a Level III residential care facility without a license commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.
4.11.3 **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.11.

4.11.4 **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.11.

4.11.5 **Jurisdiction.** The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.11.

4.11.6 **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.11 occurred.

4.11.7 **Right of entry.** To inspect the premises of a Level III residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.11.8 **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level III residential care facility with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.11. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.11.9 **Noninterference.** An owner or person in charge of an unlicensed Level III residential care facility may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

4.11.10 **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.11 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.11.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.11, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.
4.11.10.2 In an action under section 4.11, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

Resident Rights

5.1 **Resident rights.** The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices.  *[Class IV]*

5.2 **Freedom of choice of provider.** For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice.  *[Class IV]*

5.3 **Rights regarding transfer and discharge.** Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution;  *[Class IV]*

5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others;  *[Class IV]*

5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there;  *[Class IV]*

5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident;  *[Class IV]*

5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed;  *[Class IV]* or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered.  *[Class IV]*

5.4 **Transfer or discharge.** When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement.  *[Class IV]* Each notice must be written and include the following:

5.4.1 The reason for the transfer or discharge, including events which are the basis for such action;  *[Class IV]*
5.4.2 The effective date of the transfer or discharge; [Class IV]

5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as Department of Behavioral and Developmental Services); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of residential care facilities shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations list advocacy services which may be available to resident. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. [Class IV]
5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the resident can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 Right to manage financial affairs. Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 Right to freedom from abuse, neglect or exploitation. Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 Rights regarding restraints and aversive conditioning. There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]

5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation and the Regulations Governing the Use of Restraints in Community Settings. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.11.3 For any resident who is a client of the Department of Health and Human Services Adult Mental Health Program (formerly known as Behavioral and Development Services (BDS)) due to his/her mental illness, the facility/program shall comply with the Rights of Recipients of Mental Health Services, promulgated and enforced by the Department of Health and Human Services (formerly known as Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]
5.12 **Right to confidentiality.** Residents’ records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other persons except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals, groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 **Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility. [Class IV]

5.14 **Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]

5.15 **Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 **Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 **Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 **Couples.** A couple residing in an assisted housing program has the right to share a room. [Class IV]
5.19 **Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services, which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 **Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident. [Class IV]

5.21 **Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 **Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to decisions to issue Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]

5.23 **Notification of Residents Rights.** The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of any change. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. [Class IV]

5.24 **Bill of rights for persons with mental retardation.** Facilities/programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

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

Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. §19501 through §19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. §5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. §1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. §3470 through §3487.
Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

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

5.26 Reasonable modifications and accommodations. To afford individuals with disabilities the opportunity to reside in assisted living programs, the licensee shall:

5.26.1 Permit directly, or through agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden.

5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program.

5.27 Right of action. In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq.

5.28 Right to appeal an involuntary transfer or discharge. The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director of the Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing.
5.29 **Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations. [Class IV]

5.30 **Resident councils**

5.30.1 Residents of assisted living programs and residential care facilities have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:

5.30.3.1 To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved; [Class IV]

5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights; [Class IV]

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement; [Class IV]

5.30.3.4 To help identify residents' problems and recommend ways to ensure early resolution; [Class IV]

5.30.3.5 To inform the administrator of the opinions and concerns of the residents; [Class IV]

5.30.3.6 To find ways of involving the families and residents of the facility;

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and [Class IV]

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. [Class IV]

5.31 **Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies. [Class IV]
Section 6

Alzheimer’s/Dementia Unit Standards

6.1 Alzheimer’s/Dementia Care Units. A facility or unit may be designated as an Alzheimer’s/Dementia Care Unit if the following regulations are met and the facility has received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer’s/Dementia unit, the resident’s individual record must contain:

6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician’s diagnosis of Alzheimer’s disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimer’s/dementia care unit shall have:

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways, which allow residents to ambulate, but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;

6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and
6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 Physical environment. The designated Alzheimer’s/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimer’s/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.
6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 **Therapeutic activities for Alzheimer’s/Dementia Care Units.** All facilities with Alzheimer’s/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.4.3 Social activities (e.g., games, music, reminiscing, etc.);

6.4.4 Crafts (e.g., decorations, pictures, etc.);

6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.4.7 Spiritual activities.

6.5 **Pre-service training for Alzheimer’s/Dementia Care Units.** For pre-service training, all facilities with Alzheimer’s/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer’s disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer’s disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer’s Disease and related dementias;

6.5.2 Communication basics;

6.5.3 Creating a therapeutic environment;

6.5.4 Activity focused care;

6.5.5 Dealing with difficult behaviors; and

6.5.6 Family issues.
Section 7

Medications and Treatments

7.1 Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [Classes I/II/III]

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [Classes I/II/III]

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4 Unlicensed assistive personnel must be trained by a registered professional nurse in regard to the management of persons with diabetes. The registered professional nurse must provide in-service training and documentation to include: [Class III]

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation;

7.1.4.6 Treatment and prevention of insulin reaction including signs/symptoms;

7.1.4.7 Foot care;

7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and

7.1.4.9 Standard Precautions.
Documentation of training shall be included in the employee record.

Review of this training shall be on an annual basis.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.1.6 For those residents whom the facility is responsible for assistance with medication administration, no medications, including those brought into the facility by the resident, family or friends, shall be administered or discontinued without a written order signed by a duly authorized licensed practitioner or other person licensed to prescribe medications. [Class III]

7.1.7 Orders for medications and treatments shall be in writing, signed and dated by a duly authorized licensed practitioner and shall be in effect for the time specified by the duly authorized licensed practitioner, but in no case to exceed twelve (12) months, unless there is a written reorder. Orders for psychotropic medications shall be reissued every three (3) months, unless otherwise indicated by the duly authorized licensed practitioner. Standing orders for individual residents are acceptable when signed and dated by the duly authorized licensed practitioner.

7.1.7.1 Upon admission to another facility, all existing orders are no longer in effect. Upon return to the facility, all orders must be reviewed and approved by the resident’s duly authorized licensed practitioner within 72 hours. During that timeframe, orders that are signed and dated by the discharging duly authorized licensed practitioner are the current acceptable orders. Prior to admission to another facility all medications must be removed from service and placed in a locked area in accordance with Section 7.7.

7.3 Administration of medications.

7.2.1 Self-administration. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner and a facility representative.

7.2.2 Medications administered by facility. For those medications and/or associated treatments for which the facility is responsible, the following apply:
7.2.2.1 Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Written dated orders for telephone orders must be signed by the duly authorized licensed practitioner within five (5) working days. [Class III]

7.2.2.2 Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy regulations.

7.2.3 Unlicensed assistive personnel. Unlicensed assistive personnel administering medications and/or treatments must successfully complete training approved by the Department. There shall be evidence available in the facility that such training has been successfully completed. Whenever the standards or guidelines of the medication administration course are substantially revised, unlicensed personnel must be re-certified within one (1) year of the revision, by a method approved by the Department. An additional exception will be made on a case-by-case basis for persons who only administer dietary supplements and/or minor medicated treatments, shampoos, lotions and creams that could be obtained over the counter without a physician’s order.

A person qualified to administer medications must be on site at the facility whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

All unlicensed assistive personnel administering medications and/or treatments must complete a Department-approved eight (8) hour refresher course biennially for re-certification within two (2) years of the original certification. [Class III]

7.2.4 PRN Medications.

7.2.4.1 PRN Psychotropic medications. Psychotropic medications ordered "as needed" by the duly authorized licensed practitioner, shall not be administered unless the duly authorized licensed practitioner has provided detailed behavior-specific written instructions, including symptoms that might require use of medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a twenty-four (24) hour period. Facility staff shall notify the duly authorized licensed practitioner within twenty-four (24) hours when such a medication has been administered, unless otherwise instructed in writing by the duly authorized licensed practitioner.

7.2.4.2 A person qualified to administer medications must be on site at the assisted living program or residential care facility whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

In no event, however, shall antipsychotic-type psychotropic medications be prescribed on a PRN basis only, having no routinely scheduled and administered doses.
7.3 **Medication storage.**

7.3.1 Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. [Class III]

7.3.2 Medications administered by the assisted living program or residential care facility shall be kept in their original containers in a locked storage cabinet. The cabinet shall be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each resident's medications. It shall be locked when not in use and the key carried by the person on duty in charge of medication administration. [Class III]

7.3.3 Medications/treatments administered by the assisted living program or residential care facility for external use only shall be kept separate from any medications to be taken internally. [Class III]

7.3.4 Medications administered by the assisted living program or residential care facility, which require refrigeration, shall be kept safely stored and separate from food by placement in a special tray or container, except vaccines, which must be stored in a separate refrigeration unit that is not used to store food. Refrigeration shall not exceed forty-one (41) degrees Fahrenheit. A thermometer shall be used to ensure proper refrigeration. [Class III]

7.4 **Temporary absences.** When a temporary absence from the facility is expected to be greater than seventy-two (72) hours, medications leaving the facility (except those for resident’s who self-administer) must be in a form packaged and labeled by a pharmacist. For medications leaving the facility for seventy-two (72) hours or less, the medication shall be packaged in such a way as to facilitate self-administration or administration by a responsible party of the correct medication at the appropriate time. Properly certified or licensed staff will use acceptable methods and procedures for preparing medications for leaving the facility. Staff will follow the same policies used in the facility for administering medications. The name of the resident and the name and strength of each drug, as well as the directions from the original prescription package, should be conveyed to the resident or their responsible party along with all cautionary information in writing, either directly on an envelope containing the appropriate dose or on a separate instruction sheet. If the medication is sent in original container, pills must be counted and documented upon leaving and returning to the facility. [Class III]

7.5 **Medication labeling.** Each prescription dispensed by a pharmacy shall be clearly labeled in compliance with requirements of the Commission on Pharmacy and shall include at least the following:

7.5.1 Prescription number;

7.5.2 Resident's full name;
7.5.3 Name, strength and dosage of the drug;
7.5.4 Directions for use;
7.5.5 Name of prescribing duly authorized licensed practitioner;
7.5.6 Name and address of issuing pharmacy;
7.5.7 Date of issue of latest refill;
7.5.8 Expiration date; and
7.5.9 Appropriate accessory and cautionary instructions.

7.6 **Improperly labeled medications.** For medications administered by the residential care facility, all pharmaceutical containers having soiled, damaged, incomplete, incorrect, illegible or makeshift labels shall be returned to the original dispensing pharmacy for relabeling within two (2) working days or shall be disposed of in accordance with the requirements contained in Section 7.9. [Class III]

7.7 **Expired and discontinued medications.** For all medications administered by the residential care facility, medications shall be removed from use and properly destroyed after the expiration date and when discontinued, according to procedures contained in Section 7.9. They shall be taken out of service and locked separately from other medications until reordered or destroyed. [Class III]

7.8 **Medication owned by residents.** Prescribed medicines are the property of the resident and shall not be given to or taken by other residents or any other person.

7.9 **Destroying medications.** For medications administered by the residential care facility, all discontinued medications, expired medications or medications prescribed for a deceased resident, except controlled substances and individual doses, shall be destroyed by the administrator or the administrator’s designee and witnessed by one (1) competent person who is not a resident. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the pharmacist and a credit or rebate made to the person(s) who originally paid for the medication. Amounts destroyed or returned shall be recorded on the resident's record, with the signature of the administrator or the administrator’s designee and witness(es). Destruction or return to the pharmacy shall take place within sixty (60) calendar days of expiration or discontinuation of a medication or following the death of the resident.

7.10 **Schedule II controlled substances.** All Schedule II controlled substances administered by the residential care facility listed in the Comprehensive Drug Abuse Act of 1970, Public Law 91-513, Section 202 and as amended pursuant to Section 202 are subject to the following standards. [Class II]
7.10.1 For all Schedule II controlled substances, there shall be an individual record in which shall be recorded the name of the resident, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand. [Class II]

7.10.2 There shall be a recorded and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the facility that day. [Class II]

7.10.3 All Schedule II controlled substances on hand shall be counted at least weekly and records kept of the inventory in a bound book with numbered pages, from which no pages shall be removed. [Class II]

7.10.4 All Schedule II controlled substances shall be stored under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall. [Class II]

7.10.5 All excess and undesired Schedule II controlled substances in the possession of a licensed facility that are no longer required for a resident, shall be disposed of in the following manner. The Administrator or a licensed or registered nurse shall list all such unused substances and keep the same in a securely locked area apart from all other drugs. Disposal shall be in the form of incineration or flushing into the sewage system only in the presence of an authorized representative of the Department, a licensed pharmacist, a member of the Commission on Pharmacy or an authorized representative of the Drug Enforcement Agency. At least one (1) of the persons must be a person who did not dispense the drug or who was the last person to inventory the drug. Documentation of such destruction shall be made on the resident's record and in the inventory record required in Section 7.10.3, signed by the individual authorized to dispose of the drug. [Class II]

7.11 Bulk supplies. Facilities may stock in bulk supply those items regularly available without prescription at a pharmacy.

7.12 Medication/treatment administration records (MAR) for medications administered by the residential care facility.

7.12.1 Individual medication/treatment administration records shall be maintained for each resident and shall include all treatments and medications ordered by the duly authorized licensed practitioner. The name of the medication, dosage, route and time to be given shall be recorded in the medication/treatment administration record. Documentation of treatments ordered and time to be done shall be maintained in the same manner. These rules apply only to treatments ordered by licensed health care professionals. [Class III]

7.12.2 Whenever a medication or treatment is started, given, refused or discontinued, including those ordered to be administered as needed (PRN), the medication or treatment shall be documented on the medication/treatment administration record. It shall be initialed by the administering individual, with the full signature of the individual written on the first page of each month’s MAR. A medication or treatment shall not be discontinued without evidence of a stop order signed and dated by the duly authorized licensed practitioner. [Class III]
7.12.3 Medication errors and reactions shall be recorded in an incident report in the resident's record. Medication errors include errors of omission, as well as errors of commission. Errors in documentation or charting are errors of omission. [Class II]

7.12.4 Administration of medications ordered as needed (PRN) shall be documented and shall include date, time given, medication and dosage, route, reason given, results or response and initials or signature of administering individual. Treatments ordered PRN shall be documented in the same manner.

7.13 Medication containers. Graduated medicine containers, for the accurate measurement of liquid medications, shall be used. If not disposable, medicine containers shall be returned to the facility's dishwashing unit for sanitization after each use. Only sterile disposable syringes and needles shall be used for insulin injection. Disposable medicine containers shall not be reused. [Class III]

7.14 Breathing apparatus. When the facility assists a resident with a hand-held bronchodilator, metered dose nebulizers, intermittent positive pressure breathing machine or oxygen machine, there shall be documentation of the following:

7.14.1 The names of staff who are qualified or trained to use the equipment and/or to mix medications, the nature of their training, the date and who provided it;

7.14.2 The name of the distributing agency and the frequency and specific directions for cleaning the equipment; and

7.14.3 The resident's record shall contain a copy of the duly authorized licensed practitioner’s order, possible side effects to be monitored, specific instructions as to when the duly authorized licensed practitioner must be notified regarding side effects and instructions to the resident on the use of the breathing apparatus.

7.15 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or use of medical equipment not specifically outlined in these regulations, there must be documentation in the employee file.

7.16 Whenever employees are in serviced or taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
Section 8

Verification of Credentials

8.1 Licensed Staff. Prior to employing licensed staff, the facility must verify that the person has a valid and current license.

8.12 Employing CNA’s and CNA-M’s. Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or if the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.

8.13 Prohibited Employment. The facility may not hire as unlicensed assistive personnel as defined in section 2.57 an individual who is prohibited from employment as a certified nursing assistant as outlined below and in section 8.4:

8.13.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.13.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.13.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.13.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants.

8.14 Time Limit on Consideration of Prior Criminal Conviction: Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:
8.14.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;

8.4.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.15 Exception: The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of 22 M.R.S.A. §1812G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.

8.16 Notification: A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Scope of Licenses

9.1 Licensing of facilities with three (3) to six (6) residents. A license is required for more than two residents. A Level III license is required for a residential care facility with 3-6 beds if the provider has three (3) or more employees who are not owners nor related to the owner and if the requirements of these rules are met.

9.2 Exemptions for licensed children’s homes. The Department may exempt a licensed children’s home from requiring a Level III license once a resident reaches the age of eighteen (18) if the resident has not completed his/her prescribed program of treatment, care or education, or discharge from the facility will occur within nine (9) months of the date the resident turned eighteen (18). If the facility’s purpose is to treat or care for children, and the above requirements are met, the Department may grant a written exemption from licensure in order for the adult resident’s income to be supplemented.

9.3 Dual licensure. No facility shall be granted a Level III license, and any previously granted Level III license may be subject to revocation, if another license or approval is in effect or granted, unless the Department has determined that dual licensure will not have an adverse impact on the residents.

9.4 Maximum number of adult residents. The maximum number of beds for which a facility may be licensed will be determined by the Department, according to the regulations set forth herein. Respite care may only be provided in licensed beds.

9.5 Physical plant changes. No alterations in the size or arrangement of the physical plant, location of resident rooms, change in the heating system, water supply system, sewage disposal system, utilities or similar systems shall be made without the prior written approval of the Department in accordance with these regulations.

9.6 Residents under the age of 18. A person who is seventeen (17) years of age may be a resident of a Level III facility without the home being required to be licensed as a children’s home, if the Department determines in writing prior to placement that such a placement is in the best interest of that person. The general physical and mental health of all residents of the facility shall be considered in this decision.
Section 10

Provider and Staff Qualifications and Responsibilities

10.1 Provider’s age. The provider shall be at least twenty-one (21) years of age. [Class III]

10.2 Education, experience and training. The provider shall submit satisfactory evidence regarding education, experience and training to meet the needs of the residents to be served.

10.3 Qualifications of the provider. The provider must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. In making this determination, the Department may consider:

10.3.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the provider.

10.3.2 Understanding of and compliance with resident rights.

10.3.3 Any information reasonably related to the ability to provide safe and compassionate services.

10.4 Operating cash flow. Upon initial application, the provider shall give evidence of income or cash flow to meet the expenses of the facility for at least the first two (2) months. This may include such evidence as a line of credit or liquid assets.

10.5 Provider responsibilities. The provider is responsible for the overall operation of the facility and shall:

10.5.1 Ensure that staff are qualified, adequately trained and competent and are performing their duties consistent with all regulations and provisions of law;

10.5.2 Make work assignments according to the qualifications of staff and the number and needs of the residents; and

10.5.3 Assure that each resident’s abilities and needs are adequately assessed and that each resident is offered all necessary services.

10.6 Qualifications of other staff. Other caregivers must meet the following standards:

10.6.1 Any person who is given supervisory responsibility over residents must be a capable and dependable person at least eighteen (18) years of age, who is not a resident. Such a person, or the provider, will be available whenever a resident is in the facility. A record of the name, address and telephone number of persons who provide supervision in the absence of the provider shall be kept on file in the facility and shall be made available to the Department upon request. This person will be instructed regarding evacuation procedures for the facility. [Class I, II, III, IV]
10.6.2 Residential care staff shall attend and show evidence of successful completion of any training that the Department determines to be necessary.

10.6.3 No provider shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease that would threaten the health and welfare of the residents, unless Standard Precautions reduce or eliminate exposure or risk to the residents. [*Class I, II, III, IV*]

10.7 **Staffing levels.** Staffing shall be sufficient to implement service plans and provide a safe setting. Whenever the Department determines that supervision and services are not adequate to meet resident needs, additional staffing may be required at the discretion of the Department. Additionally, staffing may be permitted to be shared with other levels of assisted housing programs on the same premises as long as there is a clear, documented audit trail and the staffing in the Level III remains adequate to meet the needs of the residents. Staffing to be shared may be based upon the average number of hours used per week or month.

10.8 **Nursing services.** Nursing services are to be provided by professional nurses pursuant to Title 32 M.R.S.A. §2102, subsection 2. This includes coordination and oversight of assisted living services by unlicensed assistive personnel.

10.9 **Consultation services.**

10.9.1 **Pharmacist consultant services.** The Department reserves the right to require pharmacist consultation in the event that serious or multiple deficiencies in medication administration are noted.

10.9.2 **Registered nurse consultant services.** The Department reserves the right to require licensed nurse consultation in the event that serious or multiple deficiencies in the health care of residents are noted.

10.9.3 **Consultant dietitian services.** The Department reserves the right to require a qualified consultant dietitian in the event that serious or multiple deficiencies in food service are noted.
Section 11

Health Care and Access to Services

11.1 Medical and health care. The provider shall coordinate appropriate health care services and assist residents to access them. Each resident shall have access to a duly authorized licensed practitioner of his/her choice. Each resident shall have an annual physical, unless otherwise specified by his/her duly authorized licensed practitioner. [Class II]

11.2 Requirements for the assessment of individual needs, development and implementation of individual service plans and regular progress notes.

11.2.1 Assessments. Each resident shall be assessed within thirty (30) calendar days of admission. Reassessments must be completed annually or more frequently if there is a significant change in his/her condition. The assessments/reassessments are to determine each resident’s abilities and need for services. Residents shall have an opportunity to receive individualized services that help them function in the facility and in the community and that help restore them to an optimal state of health, or for constructive activity, as needed. The facility will assure, to a practicable extent, that residents’ needs will be accommodated regarding individual choices and preferences. This shall be evidenced in the assessment, in the development and implementation of individual service plans and in regular progress notes. The areas identified below are to be assessed. The resident and resident’s guardian or other legal representative, as well as staff or other persons approved by the resident or resident’s guardian who are knowledgeable about the resident, shall participate in or be consulted concerning the assessment. The listing of these areas is not meant to exclude assessment of any other obvious needs that residents may exhibit. The most current assessment shall be kept in the resident’s record. Previous assessments shall be kept with the resident’s active record.

11.2.1.1 Ability and need regarding psychological services, as indicated by the ability to adjust to the facility, ability to make a social and emotional transition to the facility, such as communicating/relating with others, behaving appropriately, acting compatibly with other residents or adapting/controlling personal habits;

11.2.1.2 Ability and need to maintain or develop family and community ties;

11.2.1.3 Need for educational, religious or community vocational services;

11.2.1.4 Ability and need for assistance with legal or financial problems;

11.2.1.5 Ability and need for assistance with personal care, or ADLs;
11.2.1.6 Ability to manage own personal affairs, use a telephone, handle own finances, read/write correspondence, express likes/dislikes, register to vote;

11.2.1.7 Ability and need regarding social, recreational and leisure time activities, specifying likes and dislikes;

11.2.1.8 Abilities and needs regarding hearing, vision, speech, communication, mobility and memory impairments and use of related adaptive equipment;

11.2.1.9 Ability and need for assistance with securing necessary health care, including medical, nursing, dental, day treatment, psychological or mental health services, qualified sign language interpreters and other communication assistance;

11.2.1.10 Ability and need for arranging transportation to meet medical, social and business needs;

11.2.1.11 Ability and need for assistance to be independent in the community;

11.2.1.12 Ability and need for assistance regarding administration of medications; and

11.2.1.13 Need for discharge planning.

11.2.2 Service plan. A service plan shall be developed and implemented within thirty (30) calendar days of admission for each resident based upon the findings of the assessment. The plan shall address those areas in which the resident needs encouragement, assistance or an intervention strategy. The resident, his/her legal representative (if applicable) and others chosen by the resident shall be actively involved in the development of the service plan, unless he/she is unable or unwilling to participate. There shall be documentation in the resident’s record identifying who participated in the development of the service plan. The plan shall describe strategies and approaches to meet the resident’s needs, names of who will arrange and/or deliver services, when and how often services will be provided and goals to improve or maintain the resident’s level of functioning. Residents shall be encouraged to be as independent as possible in their functioning, including ADLs and normal household tasks if they choose, unless contraindicated by the resident’s duly authorized licensed practitioner. The service plan shall be modified, as necessary, based upon identified changes. Residents shall never be required to perform activities specified in the residential service plan or any other activities and cannot be used to replace paid staff.
11.2.3 Progress notes. The facility shall maintain ongoing signed and dated progress notes at least monthly, on implementation of the service plan and for any significant changes in the resident’s life including any increases or declines in the resident’s physical and mental functioning that should be considered at the time of reassessment or adjustment in the service plan. Progress notes shall begin within twenty-four (24) hours of admission and shall include an initial summary of basic care needs, circumstances of resident’s placement and resident’s adjustment to the facility.

11.3 Transportation. The facility shall provide or arrange transportation to medical and other appointments.

11.4 First aid kit. A first aid kit containing supplies for treatment of minor injuries, such as cuts, scrapes or first-degree burns, shall be available in the facility. All staff shall be instructed in the use of any item in the kit.
Section 12

Management of Resident Personal Accounts

12.1 Written permission. The licensee or his/her representative may only manage personal accounts for a resident if requested to do so, in writing, by the resident or the resident’s legal representative.

12.2 Documentation. The provider must maintain and document an accounting of the funds, with supporting documentation for each expenditure that exceeds $2.00.

Under no circumstances shall the personal funds of any resident, beyond what the provider receives for monthly payments, be used for the operating costs of the facility or the personal expenses of the provider or his/her representative.

12.3 Commingling. Residents’ personal funds shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility.
Section 13

Resident and Other Records

13.1 **Summary sheets.** There shall be a summary sheet maintained for each resident that includes applicable information, including the resident’s name, birth date, date of admission, duly authorized licensed practitioner’s name, address and telephone number, nearest relative or friend’s name, address and telephone number, person to be notified in an emergency, their name, address and telephone number, day program name, telephone number, address and contact person, date of discharge or death and significant medical/social issues.

13.2 **Resident records.** There shall be a record maintained for each resident that contains applicable information on physical and mental condition, behavior, mood, eating habits, incidents or accidents, documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, and the dates of medical examinations, other medical and dental treatment and drugs prescribed.

13.3 **Discharge summary.** Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall include, but not be limited to the following:

13.3.1 Reason for discharge; and

13.3.2 Targeted living arrangement.

13.4 **Record of personal property.** The provider shall maintain a list of each resident’s property including items of personal value.

13.5 **Employee records for a corporation, partnership, association or an entity other than an individual.** For any provider that is a corporation, partnership, association or an entity other than an individual, the Department may request that reasonable personnel policies and records be kept documenting that employees have been trained and are competent and performing their duties consistent with these regulations.
Section 14

Safety Standards

14.1 Fire safety plans. Each facility must have a fire safety plan. The fire safety plan and any changes in the plan are to be developed in conjunction with and approved by, local or state fire authorities. [Class III]

14.2 Elements of a fire safety plan. The plan shall note steps to be taken, location of emergency exits, evacuation procedures and the telephone numbers of police, fire, ambulance and duly authorized licensed practitioners or other individuals to contact in an emergency. The fire safety plan shall be posted conspicuously in the facility.

14.3 Drills or rehearsals.

14.3.1 Timed drills, as described in the applicable chapters of the NFPA Life Safety Code, must be used in facilities with 3 or more beds to determine a facility’s capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the NFPA Life Safety Code 101A or when timed drills are not required pursuant to the Life Safety Code. When a new resident has participated in a timed drill in another residential care facility within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident’s current facility for a period of up to 4 months. [Class II]

14.3.2 Facilities with 3 or more beds shall conduct drills or rehearsals of the emergency steps to be taken at irregular times of the day, at least 6 (six) times per year spaced throughout the year. Two of the six drills must be conducted while residents are asleep. [Class II]

14.4 Record of drills or rehearsals. A record shall be kept on a form provided by the Department showing the date and time of each drill. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. [Class II]

14.5 Free-standing, solid fuel burning stoves. Freestanding, solid fuel burning stoves (including wood and coal) are permitted in living areas, but not in bedrooms. They must be installed within NFPA No. 211 guidelines or as regulated by the Solid Fuel Board of Maine. Guidelines contained in NFPA No. 211 may be obtained by contacting the Office of the State Fire Marshal. [Class III]

14.6 Portable electric heaters. Portable closed liquid electric heaters may be used if approved by the Office of the State Fire Marshal. No radiant or quartz heaters shall be used. [Class III]

14.7 Extension cords. Extension cords are prohibited, except for those cords that have a fuse mechanism. [Class III]
14.8 **Smoke Detectors.** Smoke detectors shall be functional at all times. *[Class I]*
**Section 15**

**Nutrition and Health**

15.1 **Quality and quantity of food.** The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

15.2 **Resident participation in meal planning and preparation.** Residents shall be encouraged to participate in food planning and preparation, as appropriate.

15.3 **Second-grade products.** Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods shall not be used. *(Class III)*

15.4 **Food supplies.** Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.

15.5 **Residents with communicable diseases.** No resident with a communicable disease shall be admitted if that resident’s condition or behavior endangers the health and welfare of other residents and no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.
Section 16

Living Area and Sleeping Accommodations

16.1 Living and dining areas. Residents shall be provided an area for dining and relaxation sufficient in size to accommodate the provider’s family/staff and the residents. Comfortable, non-folding chairs must be provided. The rooms shall be well lighted and free of hazards. A television set for use by the residents shall be available.

16.2 Bedrooms.

16.2.1 For facilities initially licensed on or after May 29, 1998, a minimum of one hundred (100) square feet of usable floor space shall be provided in a single bedroom. A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.2 For all facilities initially licensed before May 29, 1998, a minimum of eighty (80) square feet of usable floor space shall be provided in a single bedroom. A minimum of seventy (70) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.3 Usable floor space shall be calculated only for that floor space having a ceiling height of a minimum of six (6) feet, except as provided in Section 16.2.4. Corridors, passageways, vestibules, alcoves, closets and wardrobe space shall be excluded from the calculations of usable floor space.

16.2.4 Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) may be counted toward usable floor space for the room.

16.2.5 There shall be no more than two (2) people in each room. Couples who are both residents of the facility have the right to share a room.

16.2.6 Each resident bedroom shall have a solid door that can be closed for privacy.

16.2.7 Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum required floor space per Sections 16.2.1 and 16.2.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. In air-conditioned buildings, at least one window in each room must be able to be opened.
16.2.8 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident bedroom. No resident room shall be used for access to other rooms or corridors. [Class III]

16.2.9 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing.

16.2.10 Each resident shall be offered a bed and mattress that is at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds do not meet this requirement.

16.2.11 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected.

16.2.12 For each bed there shall be offered:

   16.2.12.1 At least two (2) dresser drawers;
   16.2.12.2 A comfortable non-folding chair in good repair;
   16.2.12.3 A bedside table; and
   16.2.12.4 A reading lamp.

16.2.13 The facility shall permit and encourage residents to use their own furnishings, space permitting.

16.2.14 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair.

16.2.15 There must be a direct source of heat to each bedroom.

16.2.16 There shall be an adequate towel, linen and bedding supply in addition to those in use, so that a complete linen change is available in the facility at all times.

16.2.17 Residents shall not share bedrooms with members of the provider’s family who are not receiving assisted living services, unless the facility obtains written permission from the Department. Permission will be granted if the arrangement is in the resident’s best interest and is acceptable to the resident or the resident’s guardian or conservator.

16.3 Renting space. The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.
Section 17

Sanitation and Safety

17.1 **Cleanliness.** The facility must be kept clean and shall be maintained in a condition ensuring the health and safety of residents. All refuse collected in common areas or from resident’s rooms shall be stored in cleanable, rodent-proof, covered containers, pending removal. \[Class III\]

17.1.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

17.1.2 The administrator shall take immediate steps to correct any condition, in the physical facility or on the premises, which poses a danger to a resident’s life, health and/or safety. \[Classes II/III\]

17.2 **Insect and rodent control.** There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. Doors and windows used for ventilation must be screened.

17.3 **Food safety and sanitation.** Food shall be stored, prepared and served in a safe and sanitary manner. \[Class III\]

17.3.1 Kitchen and food preparation areas shall be located away from possible food contamination sources. \[Class III\]

17.3.2 Kitchen and food preparation areas must be clean, and food stored so as to be free from spoilage and contamination. \[Class III\]

17.3.3 All equipment, dishes, glassware and cooking utensils shall be in good repair. \[Class III\]

17.3.4 Refrigerator temperature shall not exceed forty-one degrees (41°) Fahrenheit. \[Class II\]

17.4 **Bathrooms.** Bathrooms must be safe, sanitary and in good repair.

17.4.1 Adequate indoor bathing and flush toilet facilities for the number of residents in the facility must be provided. For all facilities licensed on or after the effective date of these regulations, a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available.

17.4.2 Bathing facilities shall afford privacy.

17.4.3 If a resident needs grab bars to bathe safely, a bathing facility equipped with grab bars that meet the Americans with Disabilities Act standards will be required.

17.4.4 Facilities shall supply a sanitary means for washing and drying hands in bathrooms.

17.5 **Telephone.** There must be a listed telephone available to all residents.
17.6 **Heat.** Resident areas of the facility shall be maintained at a temperature of, at least, seventy degrees (70°) Fahrenheit or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. [Class III]

17.7 **Hot water.** Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. [Class III]

17.8 **Exits.** In facilities licensed prior to June 1, 1989, there must be at least two (2) usable exits that are remote from each other. In facilities initially licensed on or after June 1, 1989, there must be at least two (2) usable exit doors that are remote from each other. Exits must be clear of obstructions. [Class III]

17.9 **Handrails.** Inside and outside stairs are required to have handrails. Handrails on each side of the stairs may be required to meet the needs of residents. [Class III]

17.10 **Private water supply.** A private water supply shall be tested annually and a satisfactory result obtained. The Department will furnish the applicant with forms for water testing which must be submitted to the Division of Health Engineering. No license shall be issued to a facility that does not get its water from a municipal water system until:

17.10.1 A water analysis report has been obtained, indicating that the water supply meets the standards of the Division of Health Engineering, Department of Health and Human Services; or

17.10.2 An alternative source of water that meets those standards will be used until a satisfactory water analysis report is obtained. The alternate water source must be approved in writing by the Department. [Class III]

17.11 **Poisonous and toxic materials.** When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. [Class III]

17.12 **Animals.** There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly. [Class III]

17.13 **Dryer ventilation.** Dryers shall be vented to the exterior of the building. [Class III]
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED
June 1, 2006 [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _______________________________ (hereinafter “the Provider”) and you, _______________________________. This contract describes your financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a customized addendum but these additional provisions may not conflict with or replace the use of the standard contract. The intent of having a standard contract in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you and the Provider agree as follows:

I. STANDARDS

The Provider will help to further your independence and respect your privacy and personal choices, including your choice to continue to reside here for as long as the Provider and program, as it is fundamentally designed, is able to meet your needs. The Provider’s programs will be consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services, the Provider will assist you in making other arrangements including moving somewhere else, if necessary.
II. PROVIDER LICENSE

The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the ____________. This Provider is licensed as follows (check one):

- Level I Residential Care Facility
- Level II Residential Care Facility
- Level III Residential Care Facility
- Level IV Residential Care Facility
- Level I PNMI Residential Care Facility
- Level II PNMI Residential Care Facility
- Level III PNMI Residential Care Facility
- Level IV PNMI Residential Care Facility
- Type I Assisted Living Program
- Type II Assisted Living Program

This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.
III. APPENDICES

The following Appendices are attached and made a part of this contract:

☑ Appendix A: Admissions Policy
☑ Appendix B: Your Rights
☑ Appendix C: Grievance Policy
☐ Appendix D: Tenancy Obligations (check if this applies)
☐ Appendix E: Additional terms in Customized Addendum (check if this applies)
☐ Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider

IV. ADMISSION POLICY

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

V. SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE

A. You agree to purchase:

☐ Housing and Services.
☐ Housing Only.

B. You agree to pay the following current rate to the Provider:

☐ Daily rate of $________
☐ Monthly rate of $________
The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

The landlord is _________________________________.
The amount of your current monthly rent is ________.

D. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

10. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
11. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and
12. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:
1. Personal Supervision.

☐ Even though you may travel independently in the community, the Provider will keep track of your general whereabouts

☐ Staff will accompany you to medical appointments

☐ The Provider provides an escort for regular travel

☐ The Provider has qualified staff in the building 24-hours/day

☐ Other

☐ Additional provisions: See Appendix E

2. Assistance with activities of daily living. (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)

☐ Using the telephone

☐ Changing position in bed

☐ Transferring from place to place

☐ Dressing

☐ Eating

☐ Using the bathroom

☐ Bathing

☐ Personal hygiene, such as help washing your hair

☐ Other

☐ Additional Provisions: See Appendix E

3. Incidental activities of daily living.

☐ Using the telephone

☐ Handling your finances

☐ Banking

☐ Shopping

☐ Light housekeeping

☐ Heavy housekeeping

☐ Getting to appointments

☐ Barber/beautician services
4. Medication assistance.

- Obtaining medications from the Pharmacy of your choice: ____________________________.
  - Ordered by Provider
  - Delivered by the Pharmacy
  - Ordered by you/family member
  - Picked up by Provider
  - Picked up by you/family member

- Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)

- Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for example, information that they have been administered at the right time and in the right dose

- Other __________________________________________

5. Food Service.

- Meal preparation (including the cost of food) _____ times each day
- Meal preparation (food purchased separately by you) ________ times each day
Nutritious between-meal snacks ________ times each day
Special diets ordered by your physician as follows:

Shopping for groceries you purchase
Meal planning
Other ___________________________________________

Additional Provisions: See Appendix E

6. Transportation services.

Arranging transportation (cost of transportation included)
________ miles roundtrip

Arranging transportation (cost of transportation not included)
Transportation without escort to medical appointments within ________ miles roundtrip
Transportation with escort to medical appointments within ________ miles roundtrip
Other ___________________________________________

7. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:

None
Skilled nursing services provided by a registered professional nurse.
Registered professional nurse who oversees staff and coordinates your health care needs.

8. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:
All housing costs (there will be no extra charges)
All housing costs except:

Semi-private room
Shared bathroom
Private room
Private bathroom
Efficiency apartment
One Bedroom Apartment
Two Bedroom Apartment
Other

Additional Provisions: See Appendix E

You have a lease agreement with a landlord other than the Provider: See Appendix F

9. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

None
Non-prescription analgesics and antacids
Bedroom furnishings:

Pillows, sheets, linens, towels
Laundry supplies and equipment
Laxatives
Thermometers
Non-prescription skin creams/lubricants
Mouthwash
Toothpaste
Other non-prescription ointments:_____________________
Shampoo
Soap
Facial tissue
Toilet tissue
Paper towels
Incontinence supplies

Other:_________________________________________

10. Additional Services
See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame: __________________________. If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.
B. Source of payment for services covered by the daily/monthly rate:
☐ Self-pay
☐ Self-pay and billing to a third party:________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:
☐ Self-pay
☐ Other________________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.
☐ There is a security deposit. This security deposit will not exceed one month’s rent (currently $_________), and will be refunded to you within thirty (30) days from date of discharge/death.
☐ The following costs may be deducted from the security deposit:
____________________________________________________________________________________


☐ Security deposits are part of your separate lease with the Landlord.
G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.

In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.

In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.

IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice
is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.
B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).
C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

☐ Manage own affairs
☐ Durable Financial Power of Attorney
☐ Health Care Power of Attorney
☐ Representative Payee
☐ Guardian
☐ Conservator
☐ Trustee
☐ Advance Directive/Living will
☐ Other

You agree to supply copies of all relevant information about those individuals who are responsible for your affairs as they relate to your care under this contract.

XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.
XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________

____________________________
Signature of Provider Representative

____________________________
Name of Provider

____________________________
Address

____________________________
Telephone Number

____________________________
Your Name

____________________________
Your Signature or Signature of Your Agent

____________________________
Address
APPENDIX F

This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

J. Your Landlord is: ____________________________.

K. Your current monthly rent is: ____________________________.

L. Among other things, your lease provides that you will receive the following (check all that applies):

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

___________________________________________________

___________________________________________________

___________________________________________________

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other

D. Your lease is attached here for reference.
REGULATIONS GOVERNING THE LICENSING
AND
FUNCTIONING
OF
ASSISTED HOUSING PROGRAMS:

Level IV Residential Care Facilities
Part of 10-144 Chapter 113
Effective Date (Last Amended): August 20, 2008

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF LICENSING AND REGULATORY SERVICES
State House Station 11
41 Anthony Ave.
Augusta, ME 04333-0011
(207) 287-9300
1-800-791-4080
TDD 1-800-606-0215
dlrs.info@maine.gov
## Level IV Residential Care Facilities

### Section 1. PURPOSE

### Section 2. DEFINITIONS

### Section 3. LICENSING

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Section 1

Purpose

These rules establish minimum standards for the licensing of Level IV Residential Care Facilities. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.
Section 2

Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 “Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I - an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II - an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Professional Nurse; and/or

2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by the unlicensed health care assistive personnel.

2.11 “Assisted Living Services” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:
2.11.1 “Administration of medications” means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident.

2.11.2 “Nursing services” means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

2.12 “Certified Nursing Assistant (CNA)” means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.13 “Certified Nursing Assistant/Medications (CNA-M)” means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.14 “Deficiency” means a violation of State licensing regulations.

2.15 “Dementia” means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

2.16 “Department” means the Maine Department of Health and Human Services.

2.17 “Directed Plan of Correction” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 “Distinct Part” means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

2.19 “Duly Authorized Licensed Practitioner” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
2.20 “Emergency” means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for the purpose of storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 “Independent Housing with Services Program” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

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

2.29 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.

2.30 “Licensee” means the person to whom a license is issued.
2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.40 “Provider” means the licensee.

2.41 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.42 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.43 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.44 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.
2.45 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.46 “Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.

2.47 “Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.48 “Resident Rights” means those rights enumerated in Title 22 M.R.S.A. §7921 et seq. and 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also they’re enumerated in Section 5 of these regulations.

2.49 “Residential Care Facility” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:

2.49.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.49.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.49.3 Level III - a facility with a licensed capacity of three (3) to six (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.49.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.50 “Residential Services Plan” means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.51 “Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.51.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.51.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.
2.52 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person preparing the medication for the individual.

2.53 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.54 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department, which describes deficiencies in complying with these regulations.

2.55 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department.

2.56 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.57 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.58 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 **Responsibility for compliance.** The applicant/licensee shall comply with these regulations.

3.2 **Unlicensed Level IV residential care facility.** No person, firm, partnership, association, corporation or other entity shall manage or operate a level IV residential care facility without a license.

3.3 **Person license issued to.** The license is only valid for the named licensee(s).

3.4 **Application and licensure.**

3.4.1 **Application required.** The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Residential Care Facilities - $10.00 each licensed.

3.4.2 **Admission and scope of services policy.** Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services consistent with applicable state and federal law.

3.4.3 **Additional licensing requirements.** Prior to the issuance of a license and prior to relicensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A residential care facility with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.1.2 A residential care facility with more than sixteen (16) beds must comply with the sections of the Life Safety Code that apply to large facilities and with the new residential board and care occupancy chapter if that
facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated thereunder, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);

3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing; and

3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq.

3.5 Requirement for bond. The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 Limitations on serving as legal representative. No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 Issuance of license. A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license.

3.8 Default licensing. If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.
3.9 **Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 In facilities providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program or residential care facility; and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.

The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 **Adult day services programs.** When an adult day services program is physically located in an assisted living program or residential care facility, separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the license.

3.11 **Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities, adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 **Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.
3.13 **Conditional license.** The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.

3.14 **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program or residential care facility is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the facility/program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level IV residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for a Level IV Residential Care Facility license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.
3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

3.20.1 Issuance of a conditional license;

3.20.2 Refusal to issue or renew a license;

3.20.3 Revocation or suspension of a license; or

3.20.4 Refusal to issue a provisional license.

3.21 **Renewal.** A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;

3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 **Actions requiring prior written approval.** When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 **Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 **Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of notice or receipt of the date of the informal review decision by writing to the department. See also Section 4.10 of these regulations.

3.25 **Rates and contracts.**

3.25.1 **Rates.** Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 **Signing a contract.** Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the
department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions, as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar days notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision which provides for the payment of attorney fees or any other cost of collecting payments from the resident.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;

3.25.3.6.2 Tenancy obligations;

3.25.3.6.3 Resident rights; and

3.25.3.6.4 Copy of the admissions policy.
3.25.3.7 The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of facility and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;

3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6 The program’s staff qualifications.
3.27 **Information for residents of Alzheimer’s/dementia units.** When a provider operates a unit meeting the requirements of a Designated Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

3.27.5 A description of family involvement and the availability of family support programs;

3.27.6 A description of security measures provided by the facility;

3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

3.28 **Refunds.** Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.

3.29 **Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. *(Class IV)*
3.30 **Tenancy obligation.** Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

3.31 **Administrative and resident records.**

3.31.1 **Confidentiality.** All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 **Location of records.** All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 **Inspection of records.** All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 **Record retention.** All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.

3.31.5 **Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 **Disaster plan.** Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 **Confidential information.** Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 **Inspections required.** The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. 

4.2 **Frequency and type of inspections.** An inspection may occur:

- 4.2.1 Prior to the issuance of a license;
- 4.2.2 Prior to renewal of a license;
- 4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;
- 4.2.4 When there has been a change or proposed change in administrator, physical plant or services;
- 4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;
- 4.2.6 For routine monitoring of resident care; or
- 4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 **Licensing records kept by the department.** The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 **Complaints.** The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.

4.5 **Enforcement process.**

- 4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.
4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.

4.5.3 Failure to correct any deficiency(ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.

4.5.4 **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of the Division of Licensing and Regulatory Services or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program or residential care facility without a license;

4.6.2 Operation of an assisted living program or residential care facility over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.
4.7 **Intermediate sanctions.** The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

4.7.1 The assisted living program or residential care facility may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.

4.8 **Financial penalties.**

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within
ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.

4.8.5 The amount of any penalty to be imposed shall be calculated according to the following classification system:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Definition</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.8.5.1</td>
<td>Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; operation of an assisted living program or residential care facility over licensed capacity, or impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.</td>
<td>$6.00 per resident per occurrence per day</td>
</tr>
<tr>
<td>4.8.5.2</td>
<td>Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; failure to submit a POC within ten (10) working days after receipt of an SOD; or failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.</td>
<td>$5.00 per resident per occurrence per day</td>
</tr>
<tr>
<td>4.8.5.3</td>
<td>The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3; the occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.</td>
<td>$4.00 per resident per occurrence per day</td>
</tr>
</tbody>
</table>

4.8.6 The department may impose a penalty upon a licensee of a Level IV residential care facility for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level IV residential care facility.

4.8.7 Failure to comply with 22 M.R.S.A. §7904-A (6) regarding time drills, as further described in Section 16.21.7 commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.
In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.

In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.

The department has the authority to determine whether the provider has supplied sufficient information.

Other sanctions for failure to comply.

When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program or residential care facility.

If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program or residential care facility, the department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184, subsection 6.

Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program or residential care facility, or conduct or practices detrimental to the welfare of persons living in or attending the facility/program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5 M.R.S.A., Chapter 375 §10051.

Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition the Superior Court to appoint a receiver to operate the assisted living program or residential care facility in the following circumstances:
4.9.5.1 When the assisted living program or residential care facility intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;

4.9.5.2 When an emergency exists which threatens the health, security or welfare of residents; or

4.9.5.3 When the assisted living program or residential care facility is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.

4.10 Appeal rights. Any assisted living program or residential care facility aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of the Division of Licensing and Regulatory Services, Community Services Programs and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.1 Issue a conditional license;

4.10.2 Amend or modify a license;

4.10.3 Void a conditional license;

4.10.4 Refuse to issue or renew a full license;

4.10.5 Refuse to issue a provisional license;

4.10.6 Stop or limit admissions;

4.10.7 Issue a directed POC;

4.10.8 Affirm or modify an Assessment of Penalties after an informal review;

4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or

4.10.10 Deny a request for a waiver of a rule.

4.11 Operating without a license

4.11.1 License required. A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level IV residential care facility.

4.11.2 Civil penalty for operating without a license. A person, firm, partnership, association, corporation or other entity who operates a Level IV residential care facility without a license commits a civil violation and is subject to a civil penalty
of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

4.11.3 **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.11.

4.11.4 **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.11.

4.11.5 **Jurisdiction.** The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.11.

4.11.6 **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.11 occurred.

4.11.7 **Right of entry.** To inspect the premises of a Level IV residential care facility that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.11.8 **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level IV residential care facility with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.11. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.11.9 **Noninterference.** An owner or person in charge of an unlicensed Level IV residential care facility may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

4.11.10 **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.11 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.11.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.11, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

4.11.10.2 In an action under section 4.11, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent
injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

Resident Rights

5.1 Resident rights. The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices. [Class IV]

5.2 Freedom of choice of provider. For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice. [Class IV]

5.3 Rights regarding transfer and discharge. Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution; [Class IV]

5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others; [Class IV]

5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there; [Class IV]

5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident; [Class IV]

5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; [Class IV] or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered. [Class IV]

5.4 Transfer or discharge. When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. [Class IV] Each notice must be written and include the following:

5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; [Class IV]
5.4.2 The effective date of the transfer or discharge; [Class IV]

5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of residential care facilities shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations lists advocacy services which may be available to the resident. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. [Class IV]
5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the resident can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 Right to manage financial affairs. Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 Right to freedom from abuse, neglect or exploitation. Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 Rights regarding restraints and aversive conditioning. There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]

5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation and the Regulations Governing the Use of Restraints in Community Settings. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services BDS)). [Class I, II, III, IV]

5.11.3 For any resident who is a client of the Department of Health and Human Services Adult Mental Health Program (formerly known as the Department of Behavioral and Development Services (BDS)) due to his/her mental illness, the facility/program shall comply with the Rights of Recipients of Mental Health Services, promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.12 Right to confidentiality. Residents’ records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall
have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state of federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other person except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from the facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals, groups, or categories with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 **Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility. [Class IV]

5.14 **Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]

5.15 **Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 **Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 **Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]
5.18 **Couples.** A couple residing in an assisted housing program has the right to share a room.  
*Class IV*

5.19 **Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. *Class IV*

5.20 **Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident. *Class IV*

5.21 **Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. *Class IV*

5.22 **Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to, decisions to issue a Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. *Class IV*

5.23 **Notification of Residents Rights.** The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative, within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the change. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. *Class IV*

5.24 **Bill of rights for persons with mental retardation.** Facilities/programs serving persons with mental retardation shall post and comply with the Bill of Rights for Persons with Mental Retardation, Title 34-B M.R.S.A. §5601 et seq. *Class IV*

5.25 **Mandatory report of rights violations.** Any person or professional who provides health care, social services or mental health services or who administers a long term care facility or program who has reasonable cause to suspect that the regulations pertaining to residents’ rights or the conduct of resident care have been violated, shall immediately report the alleged violation to the Department of Health and Human Services (800 383-2441) and to one or more of the following:
Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. §19501 through §19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. §5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. §1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. §3470 through §3487.

Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

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

5.26 Reasonable modifications and accommodations. To afford individuals with disabilities the opportunity to reside in an assisted living program, the provider shall:

5.26.1 Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]

5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 Right of action. In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 Right to appeal an involuntary transfer or discharge. The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director of the Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. [Class IV]
5.29 **Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations. *Class IV*

5.30 **Resident councils**

5.30.1 Residents of assisted living programs and residential care facilities have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:

5.30.3.1 To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved; *Class IV*

5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights; *Class IV*

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement; *Class IV*

5.30.3.4 To help identify residents' problems and recommend ways to ensure early resolution; *Class IV*

5.30.3.5 To inform the administrator of the opinions and concerns of the residents; *Class IV*

5.30.3.6 To find ways of involving the families and residents of the facility; *Class IV*

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and *Class IV*

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. *Class IV*
5.31 **Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies. *[Class IV]*
Section 6

Alzheimer’s/Dementia Unit Standards

6.1 Alzheimer’s/Dementia Care Units. A facility or unit may be designated as an Alzheimer’s/Dementia Care Unit if the following regulations are met and the facility has received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer’s/Dementia unit, the resident’s individual record must contain:

6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician’s diagnosis of Alzheimer’s disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimer’s/dementia care unit shall have;

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways which allow residents to ambulate, but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;

6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and

6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.
6.3.2 Physical environment. The designated Alzheimer’s/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimer’s/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.
6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimer’s/Dementia Care Units. All facilities with Alzheimer’s/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);
6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);
6.4.3 Social activities (e.g., games, music, reminiscing, etc.);
6.4.4 Crafts (e.g., decorations, pictures, etc.);
6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);
6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and
6.4.7 Spiritual activities.

6.5 Pre-service training for Alzheimer’s/Dementia Care Units. For pre-service training, all facilities with Alzheimer’s/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer’s disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer’s Disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer’s Disease and related dementias;
6.5.2 Communication basics;
6.5.3 Creating a therapeutic environment;
6.5.4 Activity focused care;
6.5.5 Dealing with difficult behaviors; and
6.5.6 Family issues.
Section 7

Medications and Treatments

7.1 Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [Classes I/II/III]

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [Classes I/II/III]

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4 Unlicensed assistive personnel must be trained by a registered professional nurse in regard to the management of persons with diabetes. Review of this training shall be on an annual basis.

The registered professional nurse must provide in-service training and documentation to include: [Class III]

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation;

7.1.4.6 Treatment and prevention of insulin reaction including signs/symptoms;

7.1.4.7 Foot care;

7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and
7.1.4.9 Standard Precautions.

Documentation of training shall be included in the employee record.

Review of this training shall be on an annual basis.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.1.6 For those residents for whom the facility is responsible for assistance with medication administration, no medications, including those brought into the facility by the resident, family or friends, shall be administered or discontinued without a written order signed by a duly authorized licensed practitioner or other person licensed to prescribe medications. [Class III]

7.1.7 Orders for medications and treatments shall be in writing, signed and dated by a duly authorized licensed practitioner and shall be in effect for the time specified by the duly authorized licensed practitioner, but in no case to exceed twelve (12) months, unless there is a written reorder. Orders for psychotropic medications shall be reissued every three (3) months, unless otherwise indicated by the duly authorized licensed practitioner. Standing orders for individual residents are acceptable when signed and dated by the duly authorized licensed practitioner.

7.1.7.1 Upon admission to another facility, all existing orders are no longer in effect. Upon return to the facility, all orders must be reviewed and approved by the resident’s duly authorized licensed practitioner within 72 hours. During that timeframe, orders that are signed and dated by the discharging duly authorized licensed practitioner are the current acceptable orders. Prior to admission to another facility all medications must be removed from service and placed in a locked area in accordance with Section 7.7.

7.4 Administration of medications.

7.2.1 Self-administration. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner and a facility representative.

7.2.2 Medications administered by facility. For those medications and/or associated treatments for which the facility is responsible, the following apply:
7.2.2.1 Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Written dated orders for telephone orders must be signed by the duly authorized licensed practitioner within five (5) working days. [Class III]

7.2.2.2 Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy regulations.

7.2.3 Unlicensed assistive personnel. Unlicensed assistive personnel administering medications and/or treatments must successfully complete training approved by the Department. There shall be evidence available in the facility that such training has been successfully completed. Whenever the standards or guidelines of the medication administration course are substantially revised, unlicensed personnel must be re-certified within one (1) year of the revision, by a method approved by the Department. An additional exception will be made on a case-by-case basis for persons who only administer dietary supplements and/or minor medicated treatments, shampoos, lotions and creams that could be obtained over the counter without a physician’s order.

A person qualified to administer medications must be on site at the facility whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

All unlicensed assistive personnel administering medications and/or treatments must complete a Department-approved eight (8) hour refresher course biennially for re-certification within two (2) years of the original certification. [Class III]

7.2.4 PRN Medications.

7.2.4.1 PRN Psychotropic medications. Psychotropic medications ordered “as needed” by the duly authorized licensed practitioner, shall not be administered unless the duly authorized licensed practitioner has provided detailed behavior-specific written instructions, including symptoms that might require use of medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a twenty-four (24) hour period. Facility staff shall notify the duly authorized licensed practitioner within twenty-four (24) hours when such a medication has been administered, unless otherwise instructed in writing by the duly authorized licensed practitioner.

7.2.4.2 A person qualified to administer medications must be on site at the assisted living program or residential care facility whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.
In no event, however, shall antipsychotic-type psychotropic medications be prescribed on a PRN basis only, having no routinely scheduled and administered doses.

7.3 Medication storage.

7.3.1 Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. [Class III]

7.3.2 Medications administered by the assisted living program or residential care facility shall be kept in their original containers in a locked storage cabinet. The cabinet shall be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each resident's medications. It shall be locked when not in use and the key carried by the person on duty in charge of medication administration. [Class III]

7.3.3 Medications/treatments administered by the assisted living program or residential care facility for external use only shall be kept separate from any medications to be taken internally. [Class III]

7.3.4 Medications administered by the assisted living program or residential care facility, which require refrigeration, shall be kept safely stored and separate from food by placement in a special tray or container, except vaccines, which must be stored in a separate refrigeration unit that is not used to store food. Refrigeration shall not exceed forty-one (41) degrees Fahrenheit. A thermometer shall be used to ensure proper refrigeration. [Class III]

7.4 Temporary absences. When a temporary absence from the facility is expected to be greater than seventy-two (72) hours, medications leaving the facility (except those by residents who self-administer) must be in a form packaged and labeled by a pharmacist. For medications leaving the facility for seventy-two (72) hours or less, the medication shall be packaged in such a way as to facilitate self-administration or administration by a responsible party of the correct medication at the appropriate time. Properly certified or licensed staff will use acceptable methods and procedures for preparing medications for leaving the facility. Staff will follow the same policies used in the facility for administering medications. The name of the resident and the name and strength of each drug, as well as the directions from the original prescription package, should be conveyed to the resident or their responsible party along with all cautionary information in writing, either directly on an envelope containing the appropriate dose or on a separate instruction sheet. If the medication is sent in original container, pills must be counted and documented upon leaving and returning to the facility. [Class III]

7.5 Medication labeling. Each prescription dispensed by a pharmacy shall be clearly labeled in compliance with requirements of the Commission on Pharmacy and shall include at least the following:
7.5.1 Prescription number;
7.5.2 Resident's full name;
7.5.3 Name, strength and dosage of the drug;
7.5.4 Directions for use;
7.5.5 Name of prescribing duly authorized licensed practitioner;
7.5.6 Name and address of issuing pharmacy;
7.5.7 Date of issue of latest refill;
7.5.8 Expiration date; and
7.5.9 Appropriate accessory and cautionary instructions.

7.6 Improperly labeled medications. For medications administered by the assisted living program or residential care facility, all pharmaceutical containers having soiled, damaged, incomplete, incorrect, illegible or makeshift labels shall be returned to the original dispensing pharmacy for relabeling within two (2) working days or shall be disposed of in accordance with the requirements contained in Section 7.9. [Class III]

7.7 Expired and discontinued medications. For medications administered by the assisted living program or residential care facility, medications shall be removed from use and properly destroyed after the expiration date and when discontinued, according to procedures contained in Section 7.9. They shall be taken out of service and locked separately from other medications until reordered or destroyed. [Class III]

7.8 Medication owned by residents. Prescribed medicines are the property of the resident and shall not be given to or taken by other residents or any other person.

7.9 Destroying medications. For medications administered by the assisted living program or residential care facility, all discontinued medications, expired medications or medications prescribed for a deceased resident, except controlled substances and individual doses, shall be destroyed by the administrator or the administrator’s designee and witnessed by one (1) competent person who is not a resident. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the pharmacist and a credit or rebate made to the person(s) who originally paid for the medication. Amounts destroyed or returned shall be recorded on the resident's record, with the signature of the administrator or the administrator’s designee and witness(es). Destruction or return to the pharmacy shall take place within sixty (60) calendar days of expiration or discontinuation of a medication or following the death of the resident.
7.10 **Schedule II controlled substances.** Schedule II controlled substances listed in the Comprehensive Drug Abuse Act of 1970, Public Law 91-513, Section 202 and as amended pursuant to Section 202 are subject to the following standards. *Class II*

7.10.1 For all Schedule II controlled substances, there shall be an individual record in which shall be recorded the name of the resident, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand. *Class II*

7.10.2 There shall be a recorded and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the facility that day. *Class II*

7.10.3 All Schedule II controlled substances on hand shall be counted at least weekly and records kept of the inventory in a bound book with numbered pages, from which no pages shall be removed. *Class II*

7.10.4 All Schedule II controlled substances shall be stored under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall. *Class II*

7.10.5 All excess and undesired Schedule II controlled substances in the possession of a licensed facility that are no longer required for a resident, shall be disposed of in the following manner. The Administrator or a licensed or registered nurse shall list all such unused substances and keep the same in a securely locked area apart from all other drugs. Disposal shall be in the form of incineration or flushing into the sewage system only in the presence of an authorized representative of the Department, a licensed pharmacist, a member of the Commission on Pharmacy or an authorized representative of the Drug Enforcement Agency. At least one (1) of the persons must be a person who did not dispense the drug or who was the last person to inventory the drug. Documentation of such destruction shall be made on the resident's record and in the inventory record required in Section 7.10.3, signed by the individual authorized to dispose of the drug. *Class II*

7.11 **Bulk supplies.** Facilities may stock in bulk supply those items regularly available without prescription at a pharmacy.

7.12 **Medication/treatment administration records (MAR) for medications administered by the assisted living program or residential care facility.**

7.12.1 Individual medication/treatment administration records shall be maintained for each resident and shall include all treatments and medications ordered by the duly authorized licensed practitioner. The name of the medication, dosage, route and time to be given shall be recorded in the medication/treatment administration record. Documentation of treatments ordered and time to be done shall be maintained in the same manner. These rules apply only to treatments ordered by licensed health care professionals. *Class III*
7.12.2 Whenever a medication or treatment is started, given, refused or discontinued, including those ordered to be administered as needed (PRN), the medication or treatment shall be documented on the medication/treatment administration record. It shall be initialed by the administering individual, with the full signature of the individual written on the first page of each month’s MAR. A medication or treatment shall not be discontinued without evidence of a stop order signed and dated by the duly authorized licensed practitioner. [Class III]

7.12.3 Medication errors and reactions shall be recorded in an incident report in the resident's record. Medication errors include errors of omission, as well as errors of commission. Errors in documentation or charting are errors of omission. [Class II]

7.12.4 Administration of medications ordered as needed (PRN) shall be documented and shall include date, time given, medication and dosage, route, reason given, results or response and initials or signature of administering individual. Treatments ordered PRN shall be documented in the same manner.

7.13 Medication containers. Graduated medicine containers, for the accurate measurement of liquid medications, shall be used. If not disposable, medicine containers shall be returned to the facility's dishwashing unit for sanitization after each use. Only sterile disposable syringes and needles shall be used for insulin injection. Disposable medicine containers shall not be reused. [Class III]

7.14 Breathing apparatus. When the facility assists a resident with a hand-held bronchodilator, metered dose nebulizers, intermittent positive pressure breathing machine or oxygen machine, there shall be documentation of the following:

7.14.1 The names of staff who are qualified or trained to use the equipment and/or to mix medications, the nature of their training, the date and who provided it;

7.14.2 The name of the distributing agency and the frequency and specific directions for cleaning the equipment; and

7.14.3 The resident’s record shall contain a copy of the duly authorized licensed practitioner’s order, possible side effects to be monitored, specific instructions as to when the duly authorized licensed practitioner must be notified regarding side effects and instructions to the resident on the use of the breathing apparatus.

7.15 First aid kit. A first aid kit containing supplies which may be necessary for the first aid treatment of minor injuries such as cuts, scrapes or first degree burns shall be included and available in the facility. All staff shall be instructed in the use of any item in the kit.

7.16 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or medical equipment not specifically outlined in these Regulations, there must be documentation in the employee file.
7.17 Whenever employees are provided in service training or are taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
Section 8

Verification of Credentials

8.1 Licensed Staff. Prior to employing licensed staff, the facility must verify that the person has a valid and current license.

8.17 Employing CNA’s and CNA-M’s. Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or if the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.

8.18 Prohibited Employment. The facility may not hire as unlicensed assistive personnel as defined in section 2.57 an individual who is prohibited from employment as a certified nursing assistant as outlined below and in section 8.4:

8.18.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.18.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.18.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.18.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants.

8.19 Time Limit on Consideration of Prior Criminal Conviction: Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:
8.19.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;

8.19.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.20 **Exception:** The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.

8.21 **Notification:** A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Scope of Licenses

9.1 Beds to be located in distinct part of facility. In facilities providing more than one licensed level of care, assisted living services must be provided in a physically distinct part of the facility. An independent building, floor or wing containing only Level IV beds may constitute a distinct part. Several beds physically proximate to one another, such as all beds on one side of a corridor or on one level of a hall, may qualify as a distinct part, but such determination must be made by the Department upon written request prior to the operation of such a distinct part. The Department will approve the request only if it is shown that such a distinct part will comply with all laws and regulations and no other reasonable alternatives are available.

9.2 Resident care limitations.

9.2.1 Application of admission criteria. The facility shall determine whether each resident admitted to the facility meets the admission criteria in accordance with Section 3.4.2 and shall not refuse admission if these criteria are met, except as provided below. If, upon reasonable inquiry, it is determined that the individual meets the admission criteria but requires professional or skilled services beyond those assisted living services described in Section 2.11, the facility may admit the resident provided the nursing needs of the resident can be met. Registered and licensed nurses employed in or operating a Level IV facility, home health nurses and nurses in private practice whose services to residents exceed those described as assisted living services may not delegate those nursing duties, such as ongoing observation and assessment, to unlicensed assistive personnel employed by the facility.

9.2.2 Evacuation capabilities. Each facility will receive a rating from the Office of State Fire Marshal as follows: prompt, slow or impractical. These ratings are based on the building’s features and systems, as required by the applicable chapter of the NFPA 101 Life Safety Code, and as further defined in Section 3.4.3. To comply with each facility’s rating, the facility:

9.2.2.1 May inquire into the applicant’s ability to comply with evacuation standards applicable to the residence, provided such inquiries are made of all applicants.

9.2.2.2 Shall comply with Section 5.26 when applicants or residents, due to disability, cannot demonstrate that they are able to evacuate the facility in accordance with the facility’s rating.

9.2.3 Other permissible exclusions. Nothing in these rules requires that a facility admit any person whose tenancy would constitute a direct threat to the health or safety of other individuals, any person whose tenancy would result in substantial physical damage to the property of the facility or those persons living in or working in the facility, or those persons who cannot meet the admission criteria or tenancy obligations in spite of the provision of reasonable accommodation and modification as required by Section 5.26.
9.3 **Facilities operated by the Church of Christ, Scientist.** Facilities conducted in accordance with the practice and principle of the body known as the Church of Christ, Scientist, shall be subject to the provisions of these regulations for licensure, except that nothing in these rules and regulations shall be construed as requiring any medical supervision, regulation or control of the medical care and treatment of residents which is inconsistent with the practice and principles of the Church of Christ, Scientist. A license to operate shall only be issued based upon conditions of safety and sanitation and other requirements which do not relate to medical supervision. The facility is required to certify annually that it operates in accordance with the practice and principles of the Church. The facility must inform the public, through the name of the home and any publicity thereon, that it is operated in accordance with the practice and principles of the Church of Christ, Scientist.
Section 10

Administration

10.1 Administrator required. There shall be an on-site administrator who shall perform such duties as the licensee may properly delegate to him/her. The administrator shall perform such functions in compliance with all applicable laws and regulations and consistent with the standard of conduct that a reasonable and prudent person would observe in the same situation. [Class III]

10.2 Administrator’s age. The administrator shall be at least twenty-one (21) years of age. [Class III]

10.3 Qualifications of the applicant/licensee and administrator. The applicant/licensee and administrator must meet the following requirements:

10.3.1 The applicant/licensee and administrator must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. The applicant/licensee and administrator, as part of the license application and renewal process, shall consent to the release of all information that may be reviewed in this Section. In making any determination under this Section, the Department may consider:

10.3.1.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the applicant/licensee and administrator;

10.3.1.2 Whether the facility is required to have a licensed administrator by the Nursing Home Administrator’s Licensing Board, and whether the administrator’s license is current and valid;

10.3.1.3 Financial ability and fiscal responsibility of the applicant/licensee (such as a history of timely payment of employee Federal withholding taxes, and capability of obtaining financing for working capital and repairs);

10.3.1.4 Management and supervisory experience, including the capacity to manage the financial operations and staff of the facility for which the license is sought. A Residential Care or Multi-Level Facility Administrator’s License will be accepted as evidence that this standard is met;

10.3.1.5 Experience in the field of health care, social services or areas related to the provision of assisted living services. A Residential Care or Multi-Level Facility Administrator’s License will be accepted as evidence that this standard is met;
10.3.1.6 Understanding of and compliance with resident rights;

10.3.1.7 Any information reasonably related to the ability to provide safe and compassionate services.

10.4 Administrator training. The administrator must have successfully completed a Department-approved training program for administrators unless they have a license from the Nursing Home Administrators Licensing Board as a Residential Care Administrator or Multi-Level Facility Administrator. On-going training of at least twelve (12) classroom hours annually is required for all administrators in areas related to care of the population served by the facility. Classroom hours from the Department-approved administrator training may count towards meeting these twelve (12) hours.

10.5 Acting administrator. A competent individual, authorized to act in the absence of the administrator during the normal working day, shall be designated. Any planned absence of the administrator for a period longer than thirty (30) calendar days shall be reported in writing to the Department, including the name of the acting administrator.

10.6 Change of administrator. In the event of a change of administrator, the licensee must notify the Department in writing within seventy-two (72) hours and submit a change of administrator application with the name of the new administrator within thirty (30) calendar days of hire. The facility may have an acting administrator for a period not to exceed sixty (60) calendar days. If no permanent administrator has been secured and no new application is submitted by the end of the sixty (60) calendar day period an extension of the time must be requested by the licensee in writing, and the request must be approved by the Department. No extension will be granted unless the licensee demonstrates that a reasonable attempt has been made to find a replacement meeting the requirements of in accordance with Section 10.3 of these regulations. If the Department does not grant an extension, the licensee shall be notified of the opportunity to request an administrative hearing pursuant to Title 5 M.R.S.A. §9051 et seq.

10.7 Physical and emotional health of administrator. The administrator shall possess physical health, mental health and the good judgment determined necessary by the Department to capably operate the facility and supervise residents. An administrator with a documented history or substantiated complaints of substance abuse or mental illness must provide evidence of satisfactory treatment/rehabilitation or references regarding current condition. An examination may be required at the discretion of the Department. Failure to disclose the above information may be grounds to deny an (re) application. [Class III]

10.8 Number of hours for administration. Hours spent for administration shall include those hours spent on-site at the facility performing administrative duties and those off-site hours spent conducting activities specifically related to the administration of the facility, but shall not include so-called “on-call” hours. In no event shall an administrator fulfill the requirements for administrative hours solely with off-site hours. The number of hours that an administrator shall perform administrative duties each week shall be as follows:
10.8.1 At least forty (40) hours each week during normal business hours is required for any facility having fifty (50) or more beds. If a person administers more than one (1) facility with a combined total of fifty (50) or more beds, there shall be a distribution of forty (40) hours between the facilities. In the case of one administrator having responsibilities in more than one facility, the Department may limit the number of beds for which that administrator can be responsible. Such limitations may be set when the allocation of hours is not sufficient to comply with all applicable laws and regulations.

10.8.2 Facilities or a combination of facilities having less than fifty (50) beds are permitted to have less than forty (40) hours of on-site administration per week. The Department may require up to forty (40) hours of on-site administration in a facility or combination of facilities of 20-49 beds and up to twenty (20) hours in facilities of 5-19 beds when there is evidence that less hours are not sufficient to fully comply with all applicable laws and regulations. Administrative hours shall be indicated on the time schedule, as required by Section 13.3.4 of these regulations, except in facilities of ten (10) or fewer beds.

10.8.3 When an administrator is shared with another facility, prior approval by the Department is required and will be granted subject to conditions in Sections 10.8.1 and 10.8.2 of these regulations.

10.9 Administrative responsibilities. The administrator is responsible for the overall operation of the facility. Notwithstanding Section 10.1, the administrator shall perform the following duties:

10.9.1 Ensure that all staff are qualified and competent and are performing their duties consistent with all regulations and provisions of law.

10.9.2 Assure that each resident’s abilities and needs are adequately assessed, that a pertinent service plan based upon assessment is developed and that each resident is offered all services as indicated in the service plan.

10.9.3 Make work assignments according to the qualifications of staff and the number and needs of the residents.

10.9.4 Develop, maintain and carry out written policies and procedures to implement these regulations. Other policies may be developed at the discretion of the facility to ensure the orderly conduct of resident care. Policies shall indicate what staff are responsible for coordination or implementation of policies and procedures. Required policies include:

10.9.4.1 Resident care;

10.9.4.2 Resident grievance procedures;
10.9.4.3 Personnel (including hiring procedures, reference checks, job qualifications and descriptions, lines of authority, employee benefits, work rules, evaluation of performance of tasks as described in the job description and disciplinary procedures);

10.9.4.4 Dietary;

10.9.4.5 Medications (administration, ordering, returning, discontinuing, destroying, charting, pharmacy consultation);

10.9.4.6 Fire and emergency procedures;

10.9.4.7 Maintenance/service agreements and schedules;

10.9.4.8 Admission/discharge and scope of services policy;

10.9.4.9 Confidentiality;

10.9.4.10 Activities/Social Services;

10.9.4.11 Staff training and development (including orientation and in-service education);

10.9.4.12 Nursing services;

10.9.4.13 Refusal of treatment/care/services; and

10.9.4.14 Emergency medical procedures, including emergency transfers. Written policies and licensing regulations are to be reviewed by and shall be available to all staff members. The facility shall also make available a copy of paragraph 67.02-3 Chapter III Section 67 of the MaineCare Benefits Manual for limitations on nursing care. These policies are also to be available for review by interested parties.

10.9.5 Provide a safe environment which supports residents’ rights and aging in place.
Section 11

Administrative and Resident Records

11.1 Individual records required. Information pertaining to a resident's stay shall be centralized in an individual record, containing the following, where applicable:

11.1.1 An identification and summary sheet that includes the following information:

- 11.1.1.1 Name, previous address and Social Security number of resident;
- 11.1.1.2 Birth date, sex and marital status;
- 11.1.1.3 Date of admission and source;
- 11.1.1.4 Religious affiliation;
- 11.1.1.5 Duly authorized licensed practitioner's name, address and telephone number;
- 11.1.1.6 Dentist's name, address and telephone number;
- 11.1.1.7 Name, address and telephone number of the legal guardian/conservator or legal representative;
- 11.1.1.8 Name, address and telephone number of the person who will make payments for boarding care (if other than the resident);
- 11.1.1.9 Name, address and telephone number of nearest relative or friend;
- 11.1.1.10 Name, address and telephone number of person to be notified in an emergency;
- 11.1.1.11 Day program name, telephone number, address and contact person, if applicable;
- 11.1.1.12 Current diagnoses and/or physical or mental disabilities and instructions as to any special care required;
- 11.1.1.13 Language spoken/communication method;
- 11.1.1.14 Discharge date, destination and reason for discharge;
- 11.1.1.15 Record of death, if death occurs in the facility, including:
  - 11.1.1.15.1 Date and time of death;
  - 11.1.1.15.2 Immediate cause of death;
- 11.1.1.16 Name, address and telephone number of the person to be notified and the procedures to be followed in an emergency to cover the immediate care of the resident and disposition of the body at the time of death.
11.1.2 A listing of all personal property of significant value to the resident that includes such things as jewelry, radios, television sets, dentures, appliances and other valuables. Where serial numbers are available, these shall be included as part of the record. The record shall be signed and dated by the resident or his/her legal representative. When significant items of personal property are brought into or removed from the facility, it shall be so noted in the record. It shall be noted in the record if a resident has no personal property of significant value.

11.1.3 A record or statement from the duly authorized licensed practitioner showing the date of the resident's last annual physical examination and any pertinent information on the resident's diagnosis, physical condition and medical history. If a resident has had a physical examination within one (1) year of the date of admission, a copy of the report shall be obtained and placed in the resident's record. A complete physical must be scheduled upon admission if no physical exam has been done in the past year.

11.1.4 Written and dated orders signed by a duly authorized licensed practitioner for all treatments, medications and special diets.

11.1.5 Individual medication records, kept in accordance with Section 7.12 of these regulations.

11.1.6 Other information including:

11.1.6.1 Diabetic record, if applicable;

11.1.6.2 Illnesses;

11.1.6.3 Copies of incident or accident reports in accordance with Section 11.1.7;

11.1.6.4 Visits to or by the duly authorized licensed practitioner or other health professional (e.g., dentist or audiologist);

11.1.6.5 Documentation at least monthly of observed changes in the resident's condition or behavior, progress in reaching service plan goals or other information needed to properly assess and evaluate the resident in accordance with Section 12.2 of these regulations;

11.1.6.6 Assessment and residential service plan;

11.1.6.7 Denture identification number;

11.1.6.8 Social service record;

11.1.6.9 Contract;
11.1.6.10 Documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, if such a relationship exists; and

11.1.7 Incident reports. An incident report shall be completed for any resident who has sustained or caused a fall, injury or accident in the facility, while being transported by the facility, or in an activity supervised by facility staff, who unsafely wanders from the facility, who is involved in an altercation with another resident, who has a medication reaction, or when an error is made in the documentation or administration of medication. The report shall describe the incident and indicate the extent of the injury or reaction and necessary treatment. The dispensing pharmacy shall be consulted regarding incidents involving medications, in order to assist in assessing adverse drug reaction, drug-drug interaction, drug-food interaction and allergies/sensitivities. If, in the opinion of the administrator or person in charge, the incident is not serious enough to call an examining duly authorized licensed practitioner, an incident report shall still be recorded in the resident's record. The administrator shall initial the record within seventy-two (72) hours. If examination and treatment by a duly authorized licensed practitioner is necessary as a result of an incident, the facility shall notify the guardian or conservator as soon as possible, within seventy-two (72) hours.

11.1.8 Refusal of care or treatment. The resident’s record shall contain documentation when a resident refuses to consent to care or treatment which the facility is required to provide in accordance with the standards for resident care (Section 12) or as prescribed by a duly authorized licensed practitioner.

11.1.9 Referral/transfer form. A referral or transfer form shall be prepared when any resident is transferred from one facility to another facility, institution or agency or to another level of care within the same facility. A copy shall be kept in the resident's record at both facilities. The referral or transfer form shall contain a summary of information about the admitted/discharged resident to ensure continuity of care, including a copy of the most recent history, physical examination report, duly authorized licensed practitioner's orders and a copy of the resident's most recent assessment and service plan. [Class III]

11.1.10 Computerized records. Records may be computerized, so long as appropriate staff are adequately trained in accessing, reading and maintaining these records and the records are readily accessible and available to all appropriate staff.

11.2 Admission/discharge log. All admissions and discharges shall be recorded in a bound book, indicating the residents' names and dates of admission and discharge.

11.3 Daily census. A daily census shall be recorded and kept in the facility. In facilities with ten (10) or fewer beds, the census may be kept by omission, that is, kept as a record of resident absences from the facility and may be kept individually in each resident's record.
11.4 Personal funds.

11.4.1 Permission to management personal funds of residents. No provider or agent of a provider shall manage, hold or deposit in a financial institution the personal funds of any resident of the facility, unless written permission is received therefore from:

11.4.1.1 The resident, if the resident has no legal representative;

11.4.1.2 The resident’s legal representative, if such person exists and can be reached; or

11.4.1.3 The Department, if a legal representative exists, but cannot be reached.

11.4.2 Itemized accounting. Any operator or agent who, after receiving written permission pursuant to Section 11.4.1, manages or holds the personal funds of any resident, shall maintain an up-to-date, accurate account for these funds, which shall include for each resident, a separate, itemized accounting for the use of the resident’s personal funds, with supporting documentation for every expenditure in excess of two dollars ($2.00). It shall be provided to the resident on a quarterly basis for their review.

11.4.3 Depositing personal funds. The Department may require the facility to deposit in a financial institution the personal funds of a resident if the resident has a legal representative who cannot be reached.
Section 12

Standards for Resident Care

12.1 General rule. Residents shall have the opportunity to receive individualized services that help them age in place, function optimally in the facility and in the community, engage in constructive activity, and manage their health conditions. The facility will assure, to a practicable extent, that residents’ needs will be accommodated regarding individual choices and preferences. This shall be evidenced in the assessment of individual needs, development and implementation of individual service plans and in regular progress notes.

12.2 Resident assessment. Residents shall be assessed within thirty (30) calendar days of admission and reassessed annually or if there is a significant change in a resident’s condition, to determine their abilities and need for services. The resident and resident’s legal representative, as well as staff or other persons approved by the resident or resident’s legal representative who are knowledgeable about the resident, shall participate in or be consulted concerning the assessment. The areas identified below are to be assessed. The listing of these areas is not meant to exclude assessment of any other obvious needs which the residents may exhibit.

12.2.1 Ability and need for psychological or supportive services, as may be evidenced by his/her adjustment to the facility, social and emotional issues, communications/relations with others, behaviors, compatibility with staff and other residents, or adapting/controlling personal habits;

12.2.2 Ability and need to maintain or develop family and community ties;

12.2.3 Need for educational, religious or community vocational services;

12.2.4 Ability and need for assistance with legal or financial problems;

12.2.5 Ability and need for assistance with personal care or ADLs as defined in Section 2 of these regulations;

12.2.6 Ability to manage personal affairs, use the telephone, handle finances, read and write correspondence, express likes and dislikes and register to vote;

12.2.7 Ability and need regarding social, recreational and leisure time activities, specifying likes and dislikes;

12.2.8 Abilities and needs regarding hearing, vision, speech, communication, mobility and memory impairments and use of related adaptive equipment;

12.2.9 Ability and need for assistance with securing necessary health care, including medical, nursing, dental, day treatment, psychological or mental health services, qualified sign language interpreters and other communication assistance;
12.2.10 Ability and need for arranging transportation to meet medical, social and business needs;

12.2.11 Ability and need for assistance to be independent in the community;

12.2.12 Ability and need for assistance regarding administration of medications;

12.2.13 Need for discharge planning.

12.3.1 Service plan. A service plan shall be developed and implemented within thirty (30) calendar days of admission for each resident based upon the findings of the assessment. The plan shall address those areas in which the resident needs encouragement, assistance or an intervention strategy. The resident, his/her legal representative (if applicable) and others chosen by the resident shall be actively involved in the development of the service plan, unless he/she is unable or unwilling to participate. There shall be documentation in the resident’s record identifying who participated in the development of the service plan. The service plan shall describe strategies and approaches to meet the resident’s needs, names of who will arrange and/or deliver services, when and how often services will be provided and goals to improve or maintain the resident’s level of functioning. Residents shall be encouraged to be as independent as possible in their functioning, including ADLs and IADLs if they choose, unless contraindicated by the resident’s duly authorized licensed practitioner. The service plan shall be modified, as necessary, based upon identified changes. Residents shall never be required to perform activities specified in the residential service plan or any other activities and cannot be used to replace paid staff.

12.4 Progress notes. The facility shall maintain ongoing progress notes at least monthly, on implementation of the service plan and for any significant changes in the resident’s life, including any increases or declines in the resident’s physical and mental functioning that should be considered at the time of reassessment or adjustment in the service plan. Progress notes shall begin within twenty-four (24) hours of admission and include an initial summary of basic care needs, circumstances of resident’s placement and resident’s adjustment to the facility.

12.5 Preferred activities. Providers shall make a variety of activities available which are of interest to the residents, in addition to television and movies. Activities shall be oriented to individual resident preferences.

12.6 Planned activity program. In addition to the requirements of Section 12.5, there shall be a planned program for diversional and motivational activities suited to the residents’ needs and interests, as identified under Section 12.2. The program shall consist of a variety of activities designed for both group and individual participation and shall include activities outside the home, during the week and on weekends. Reasonable, accessible transportation to outside activities shall be provided or arranged. In facilities with more than ten (10) beds, an activity schedule shall be posted in resident areas. Where necessary, activities shall be modified to eliminate or reduce barriers to resident participation due to physical or cognitive limitations or language differences, including assisting the resident in learning the skills or knowledge to participate in activities.
12.7 Residents rising and retiring. Individual preferences of the residents shall be considered for times of rising and retiring, except as may be provided in the service plan.

12.8 Reading and recreational materials. A variety of reading and recreational materials which shall be available to the residents at all times. These shall include at a minimum, a daily newspaper, a variety of current magazines, radio and an operational television set. A facility’s obligation to provide these materials is not waived when residents have their own.

12.9 Resident instruction in evacuation procedures. Residents and staff shall participate in regularly scheduled fire drills. This shall include instructions or action to be taken when the primary escape route is blocked. There shall be posted evacuation plans clearly showing the location of all exits. Fire and emergency policies and procedures, required pursuant to Section 10.9.4.6, shall contain procedures for the protection of all persons in the event of fire and for their remaining in place, for their evacuation to areas of refuge and from the building when necessary. These policies shall include special staff actions, including fire protection procedures needed to ensure the safety of any resident, and shall be amended or revised upon admission to the home of any resident with special needs. [Class II]

12.10 Medical and health care. The facility is responsible for promptly coordinating and assisting in accessing appropriate services for residents. The health care of every resident shall be under the supervision of a duly authorized licensed practitioner. Each resident shall have an annual physical, unless otherwise specified by the licensed medical professional.

12.11 Residents with communicable diseases. The facility shall not admit residents with a communicable disease if that resident’s condition or behavior endangers the health and welfare of other residents and if no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.

12.12 Employees with communicable diseases. No facility shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease which would threaten the health and welfare of the residents unless Standard Precautions reduce or eliminate exposure or risk to the residents.

12.13 Transportation. The facility shall provide or arrange transportation to medical and other appointments. Other transportation to meet residents’ recreational, social and business needs of a reasonable nature will also be provided or arranged by the facility. This does not apply to transportation which is necessary to be provided by ambulance.

12.14 Refusal of care or treatment. In the event that a resident refuses necessary care or treatment, the facility shall document reasonable efforts made to consult with the resident’s licensed medical professional, the registered nurse consultant, caseworker or other appropriate individuals in order to ensure that residents receive necessary services. However, in no case shall a person who does not have legal authority to do so, order treatment that has not been consented to by a competent resident. [Class III]
**12.15 Discharge summary.** Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall be inclusive of, but not limited to the following:

**12.15.1** Reason for discharge;

**12.15.2** Targeted living arrangement;

**12.15.3** Identification and coordination of skills and supports and steps necessary for discharge to occur.
Section 13

Staffing

13.1 General requirements. Minimum staffing shall be adequate to implement service plans, as well as to provide a safe setting. The Department reserves the right to require additional personnel or to modify the requirements of this section due to the level of supervision and care required by the residents, the size of the facility, and distinct parts or distribution of residents throughout the physical plant. It is further required that all regular staff have in-service training at least annually, in areas related to the specific needs of the residents served.

13.2 Staff requirements in facilities with ten (10) or fewer beds.

13.2.1 Facilities with ten (10) or fewer beds are required to have, at a minimum, one (1) responsible adult who is at least eighteen (18) years of age, present at all times whenever residents are present, to perform resident care and provide supervision of residents. This person shall possess the good health and judgment determined necessary by the Department to carry out assigned duties. The Department may require an examination and submission of a written report from a duly authorized licensed practitioner or psychologist licensed to practice in Maine.

13.2.2 The name, address and telephone number of all persons, other than the owner or administrator, who provide care and supervision of residents shall be available to the Department upon request.

13.3 Minimum requirements for more than ten (10) beds.

13.3.1 There shall be at least two (2) responsible adults awake, on duty and readily available at all times, able to act effectively in the event of an emergency, except as provided in Section 13.3.2. If less than two (2) resident care staff are required by Section 13.4, a staff person serving in another capacity may be considered as the second person as long as the on-duty requirement is fulfilled.

13.3.2 For purposes of Section 13.3.1, resident care includes the functions of direct resident care and supervision, activities, housekeeping, laundry and social services. It excludes administration, maintenance and dietary service. If persons performing these functions also perform resident care, the hours assigned to each function shall be shown on the weekly time schedule. The Department may allow direct dietary time to be included in resident care ratios when residents are involved in food preparation and serving as part of a service plan and are supervised by staff. Approval shall be requested by the facility in writing. Resident care staff may assist in setting tables, serving meals and clearing the dining tables.
13.3.2 Only persons who are eighteen (18) years of age or older, except for a CNA who is sixteen (16) or older, shall perform resident care duties, and be counted toward staffing requirements for resident care.

13.3.3 The Department has the right to require that one (1) or more staff members receive training or be retrained when necessary, to correct or prevent any violation of these regulations.

13.3.4 Weekly time schedules shall be posted and shall include each employee’s name, job function/title, hours of work and days of each week. All employees, including the administrator, must be listed on the time schedule. When an employee has more than one function, the breakdown of hours shall be noted. Time schedules shall reflect the actual days/hours worked by all employees in the time period of the schedule and shall be made available to the Department’s authorized representatives.

13.4 Minimum resident care staff to occupied bed ratios. A minimum resident care staff to occupied bed ratio shall be maintained at all times. In facilities with more than ten (10) beds, the ratio shall be 1:12 from seven a.m. to three p.m. (7:00 a.m. to 3:00 p.m.), 1:18 from three p.m. to eleven p.m. (3:00 p.m. to 11:00 p.m.) and 1:30 from eleven p.m. to seven a.m. (11:00 p.m. to 7:00 a.m.). For facilities of ten (10) or fewer beds, reference is made to Section 13.2.

13.5 Employee records. Facilities must maintain individual records on all related and unrelated employees. Records shall contain the initial date of employment, date of birth, home address and telephone number, experience and qualifications, social security number, copy of current occupational license (if applicable), references and reference check information, job description, record of participation in in-service, orientation or other training programs, results of annual personnel evaluations, disciplinary actions, illness and injury records and date of and reason for termination. Records may be computerized.

13.6 Staff training, education and qualifications.

13.6.1 Within one hundred twenty (120) days of hiring, all staff, other than CNA’s and licensed professional staff whose job responsibilities include direct service to residents for at least twenty (20) hours per week, shall successfully complete a certification course approved by the Department.

13.6.2 Additional training specific to a facility’s programs may be identified and required by the Department for any staff.

13.6.3 Any person working in the facility who is not a resident must demonstrate the following:

13.6.3.1 Conduct which demonstrates an understanding of, and compliance with, residents' rights;
13.6.3.2 The ability and willingness to comply with all applicable laws and regulations;

13.6.3.3 The ability to provide safe and compassionate services; and

13.6.3.4 A history of honest and lawful conduct.

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

13.8 Nursing services. Nursing services may be provided directly by, or under the supervision of, registered nurses or licensed practical nurses employed by the facility or by contract with home health agencies or other persons permitted by law to provide nursing care, subject to the limitations in Section 9.2. Delegation of nursing care must be in accordance with the Nurse Practice Act. [Class III]

13.9 Registered nurse services. Each facility shall retain a registered nurse, either on staff (other than the Administrator) or on a contractual basis, to provide the following services:

13.9.1 Observe residents' signs and symptoms;

13.9.2 Review resident records for completeness and accuracy;

13.9.3 Review medication records;

13.9.4 Review medication administration practices and procedures;

13.9.5 Review therapeutic diets;

13.9.6 Recommend staff training; and

13.9.7 Undertake other reviews or make other recommendations as necessary.

These services will be provided on the following timetable:

For facilities licensed for 7-10 residents - a minimum of quarterly
For facilities licensed for 11-25 residents - a minimum of every sixty (60) calendar days
For facilities licensed for 26-40 residents - a minimum of monthly
For facilities licensed over 40 residents - a minimum of weekly

When the R.N. is not on staff (e.g., hired on a contractual basis) a written report with specific recommendations in each area shall be provided to the administrator within one (1) month.
13.10 **Pharmacist consultant services.** Each facility of more than ten (10) beds shall retain the services of a pharmacist consultant no less than quarterly to:

13.10.1 Review written policies and procedures for pharmaceutical services;

13.10.2 Review medication areas for labeling, storage, temperature, expired medications, locked compartment, access to keys and availability and completeness of a first aid kit;

13.10.3 Review to ensure that only approved drugs and biologicals are used in the facility;

13.10.4 Review medication records and initial and date the records when reviewed;

13.10.5 Review adherence to stop orders; and

13.10.6 Review staff performance in carrying out pharmaceutical policies and procedures.

The pharmacist consultant shall provide the administrator with a timely written report of findings, with specific recommendations in each of the areas reviewed.

13.11 **Qualified consultant dietitian.** The Department reserves the right to require the facility to obtain the services of a qualified consultant dietitian in the event that serious or multiple deficiencies in dietary service are noted.
Section 14

Dietary Services

14.1 Dietary coordinator. The facility shall have a dietary coordinator who has experience and/or training in food service suitable to the size of the facility. Experience and/or training may include on-the-job training. This individual shall have the ability to coordinate and manage the food services in the facility. This includes menu planning, food purchasing, food storage, preparation and serving. The dietary coordinator shall demonstrate knowledge of minimum daily food requirements, how to use dietary reference or other resource materials to meet daily and therapeutic nutritional needs and how to measure portions for therapeutic diets.

14.2 Adequacy of diets. The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

14.3 Planned menus. Menus shall be planned in accordance with resident needs and preferences. A variety of foods and fresh fruits and vegetables in season shall be offered.

14.4 Menus posted and filed. Menus shall be posted conspicuously in the food service area and in an area used frequently by residents during the week used, and shall be kept on file for three (3) months. The posted menu shall be in large enough print for all residents to be able to read easily.

14.5 Record of food served, menu changes and substitutions. Changes made in the planned menu shall be recorded daily in the facility and shall be consistent with Section 14.2. Substitutions of similar nutritive value shall be offered when menu items have been refused. In facilities with ten (10) or fewer beds, a record of food served may be maintained in lieu of planned menus and shall be kept on file for three (3) months. [Class II]

14.6 Therapeutic diets. Therapeutic diets are considered treatments and shall be ordered in writing by the duly authorized licensed practitioner. Menus for medically prescribed therapeutic diets shall be planned in writing and approved by a qualified consultant dietitian.

14.7 Diet manual. Each facility shall have a current (not more than five [5] years old) therapeutic diet manual that is recommended or approved by a qualified consultant dietitian.

14.8 Food supplies. Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus. [Class I/II]

14.9 Meal schedule. Residents shall be offered at least three (3) meals in a twenty-four (24) hour period. Nourishing between-meal snacks shall be offered. Additional foods and beverages shall be made available twenty-four (24) hours per day.
14.10 **Record of food purchased.** The Department may require that the facility record the type and quantity of food purchased to determine compliance with Section 14.5.

14.11 **Resident participation in meal planning and preparation.** Residents shall be encouraged to participate in food planning. Facility policies may prohibit resident involvement in food preparation and serving if it interferes with food service.

14.12 **Mealtime atmosphere.** The facility shall encourage use of the dining area by residents. Food shall be served at the proper temperatures.
Section 15

Sanitation/Dietary Services

15.1 Common kitchen and areas used to prepare food. Kitchen and areas used to prepare food shall be located away from possible food contamination sources.

15.2 Food service sanitation. Food shall be safe for human consumption. Food shall be obtained from sources that comply with all laws pertaining to food and food labeling. Fresh produce may be purchased at farm stands.

15.3 Food storage. All food shall be stored using safe and sanitary methods. [Class III]

15.3.1 Food shall be stored at least six (6) inches above the floor on clean racks, dollies or other clean surfaces.

15.3.2 Food or containers of food shall not be stored under, or exposed to, unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

15.3.3 Shelving in storage areas, refrigerators and freezers shall be in good condition with cleanable surfaces.

15.3.4 Food not subject to further washing or cooking before serving shall be stored in such a manner as to be protected against contamination from food requiring washing or cooking.

15.4 Equipment and utensils. All kitchenware and equipment used in the preparation, service, display or storage of food shall be maintained in a clean and sanitary manner.

15.4.1 All tableware, kitchenware and utensils shall be stored off the floor in a clean and sanitary manner.

15.4.2 Single service items shall not be reused.

15.4.3 All kitchenware and food contact surfaces of equipment shall be washed, rinsed and sanitized after each use.

15.4.4 Food preparation surfaces shall be in good repair and easily cleaned. They shall be cleaned thoroughly after use.

15.5 Employee cleanliness. All employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.
15.5.1 No person while affected with any disease in a communicable form or while afflicted with boils, infected wounds, sores, or any acute gastrointestinal or respiratory infection shall work in any area of food service in a capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other individuals. [Class III]

15.5.2 All employees shall thoroughly wash their hands and arms with soap and warm water before starting work and as often as may be required to remove soil and contamination and immediately after visiting the toilet room. Employees shall keep fingernails clean. [Class III]

15.5.3 Employees shall not use tobacco in any form while engaged in food preparation or service or while in equipment and utensil washing or food preparation areas.

15.6 Milk and milk products.

15.6.1 Only pasteurized milk and milk products shall be used. [Class III]

15.6.2 Milk served for drinking shall be served in the original container received from the dairy or poured directly into the resident's glass at mealtime. Approved bulk dispensers may be used. [Class III]

15.6.3 No reconstituted powdered milk or evaporated milk shall be served for drinking. Dry or evaporated milk shall only be used for cooking.

15.7 Eggs. Eggs and egg products permitted include:

15.7.1 Clean, whole eggs, with shell intact, without cracks or checks;

15.7.2 Pasteurized liquid, frozen or dry eggs or pasteurized dry egg products;

15.7.3 Hard-boiled, peeled eggs; and

15.7.4 Commercially prepared and packaged eggs.

15.8 Shucked shellfish. Fresh and frozen shucked shellfish (oysters, clams or mussels) shall be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker/packer or repacker and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. [Class III]

15.9 Raw fruits and vegetables. All raw fruits and vegetables shall be washed thoroughly before being cooked and served. [Class III]
15.10 Refrigerated storage.

15.10.1 Potentially hazardous foods requiring refrigeration after preparation shall be rapidly cooled to an external temperature of forty-one degrees (41°) Fahrenheit or below.  [Class II]

15.10.2 Frozen food shall be kept frozen and shall be stored at a temperature of zero degrees (0°) Fahrenheit or below.  [Class II]

15.10.3 Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head.  Ice used for cooling stored food and food containers shall not be used for human consumption.

15.10.4 Sufficient numbers of refrigerators or freezers shall be provided to assure the maintenance of potentially hazardous food at the required temperatures during storage.

15.10.5 Conspicuous, easily readable thermometers shall be provided for each refrigerator and freezer in the facility.

15.10.6 Eggs shall be refrigerated at all times except when being used in cooking and/or being served.  [Class II]

15.10.7 A safe temperature for food must be maintained throughout the transport and service of meals.

15.10.8 Perishable, refrigerated and frozen food shall be labeled and dated to determine whether they have proper nutritional value when served and are safe for human consumption.

15.11 Thawing potentially hazardous foods.  Potentially hazardous foods shall be thawed as follows:

15.11.1 In refrigerator units at a temperature not to exceed forty-one degrees (41°) Fahrenheit; or  [Class II]

15.11.2 Under potable running water at a temperature of seventy degrees (70°) Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; [Class II] or

15.11.3 In a microwave oven, only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire uninterrupted cooking process takes place in the microwave oven; or  [Class II]

15.11.4 As part of a continued cooking process.  [Class III]
15.12 Cooking potentially hazardous foods.

15.12.1 Poultry, poultry stuffing, stuffed meats and stuffing containing meat shall be cooked to heat all parts of the food to at least one hundred sixty-five degrees (165°) Fahrenheit, with no interruption of the cooking process. [Class I/II]

15.12.2 Pork and any food containing pork shall be cooked to heat all parts of the food to at least one hundred fifty degrees (150°) Fahrenheit. [Class I/II]

15.12.3 Rare roast beef and rare beefsteak shall be cooked to an internal temperature of at least one hundred thirty degrees (130°) Fahrenheit, unless otherwise ordered by the immediate consumer. [Class I/II]

15.12.4 Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to one hundred sixty-five degrees (165°) Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. [Class I/II]

15.12.5 All potentially hazardous food shall, except when being prepared, be kept at forty-one degrees (41°) Fahrenheit or below, or one hundred forty degrees (140°) Fahrenheit or above. [Class I/II]

15.12.6 Custards, cream fillings or similar products shall be kept at safe temperatures of forty-one degrees (41°) Fahrenheit or below, except during necessary periods of preparation and service. [Class I/II]

15.12.7 All perishable foods shall be stored at such temperatures as will protect against spoilage. [Class I/II]

15.13 Second-grade products prohibited. Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods are prohibited from use. [Class I/II]

15.14 Manual dishwashing. When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution having a temperature of at least one hundred twenty degrees (120°) Fahrenheit and then shall be rinsed free of such solution. Eating and drinking utensils shall be sanitized by one of the following three methods:

15.14.1 Immersion for at least one-half (1/2) minute in clean hot water at a temperature of at least one hundred seventy degrees (170°) Fahrenheit.

15.14.2 Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and at a temperature of at least seventy-five degrees (75°) Fahrenheit.

15.14.3 Other sanitizing methods may be used upon written approval of the Department.
15.15 Mechanical dishwashing. When mechanical cleaning and sanitizing is used, the following standards shall be met:

15.15.1 The wash-water temperature shall be at least one hundred thirty (130°) Fahrenheit. When hot water is relied upon for sanitization, the final or fresh rinse water shall be at least one hundred eighty degrees (180°) Fahrenheit, unless otherwise stated in the manufacturer’s specifications.

15.15.2 When chemicals are relied on for sanitization, they shall be applied in such concentration and for such a period of time as to provide effective bacterial treatment of the equipment and utensils.

15.15.3 Machines (single-tank, stationary rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used, provided that the wash-water is kept clean, chemicals added for sanitization are automatically dispensed and the chemical sanitizing rinse-water temperature is not less than seventy-five degrees (75°) Fahrenheit, nor less than the temperature specified by the machine manufacturers.

15.16 Testing of chemical sanitizers. When chemical sanitizing solutions are used for either manual or mechanical sanitization, an approved test kit shall be used to measure the residual of the sanitizing solution.
Section 16

Sanitation/Physical Plant Requirements

16.1 Facility design. The facility shall be designed, operated and maintained in a manner appropriate to the special needs of the population to be served.

16.2 Passable road. The facility shall be served by a road that is regularly maintained and passable at all times of the year. [Class III]

16.3 Heating systems. There shall be a central heating plant connected to each room or area used by residents or staff by means of a radiator, convector or register. The heating system must be capable of maintaining a temperature of seventy-five degrees (75°F) Fahrenheit throughout resident areas of the facility. Alternate types of heating systems may be approved by the Department, if a uniform temperature of seventy-five degrees (75°F) Fahrenheit can be maintained. Systems other than electric heating shall have an annual inspection and the heating source shall be tagged as being inspected.

16.4 Temperature. Resident areas of the facility shall be maintained at a temperature of seventy degrees (70°F), or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. [Class III]

16.5 Renting space.

16.5.1 The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.

16.5.2 Adult Day Services may be provided in the facility to persons residing outside of the facility, with written approval from the Department to provide such services. The facility must have adequate physical plant and staffing and, if providing Adult Day Services to three or more consumers, must meet the requirements of 3.10.

16.6 General condition of the facility and surrounding premises.

16.6.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

16.6.2 The administrator shall take immediate steps to correct any condition in the physical facility or on the premises, which poses a danger to a resident’s life, health or safety. [Class II, III]
16.7 Toilets and bathing facilities.

16.7.1 In existing facilities, a bathroom equipped with flush toilets and hand-washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available. Users include residents, as well as staff on duty. Facilities shall have adequate toilet facilities for staff and visitors separate from those toilets in private resident rooms. There shall be a mirror over each sink. All facilities are required to have hard-wired, wireless or battery-operated call bell systems in bathrooms, unless the bathroom is designated for non-resident use.

16.7.2 In new construction projects licensed on or after July 1, 2003, there shall a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) residents. There shall be at least one (1) dedicated staff bathroom. There shall also be public bathrooms at a ratio of:

- 1-25 residents – one public bathroom
- 26-50 residents – two public bathrooms
- 51-75 residents – three public bathrooms
- 76-100 residents – four public bathrooms
- 101-125 residents – five public bathrooms
- 126-150 residents – six public bathrooms

There shall be a mirror over each sink. All facilities are required to have hard-wired, wireless or battery-operated call bell systems in bathrooms, unless the bathroom is designated for non-resident use.

16.7.3 An adequate supply of hand-cleansing soap or detergent shall be available at each lavatory. An adequate supply of paper towels or an approved hand-drying device shall be available and conveniently located near the lavatory. Common towels and drinking cups are prohibited. This section does not apply to lavatories in private resident rooms with private baths. [Class III]

16.7.4 Flush toilets shall be located indoors and be in good repair, ventilated to the outside and maintained in a sanitary condition. [Class III]

16.7.5 Commodes, urinals and bedpans used in resident bedrooms shall be clean and sanitary.
16.7.6 In order to accommodate resident privacy, doors or stalls shall have locks.

16.7.7 For facilities initially licensed prior to May 30, 2002, there shall be bathing facilities at a ratio of one (1) per fifteen (15) users. For facilities initially licensed on or after May 30, 2002, there shall be bathing facilities at a ratio of one (1) per ten (10) users. All facilities are required to have at least one (1) bathtub and one (1) shower.

16.7.8 Facilities initially licensed after May 29, 1998 shall have at least one (1) tub or shower for each floor that has resident bedrooms.

16.7.9 Knock lights and visual alarms shall be installed in bathrooms when there is a deaf or severely hard of hearing resident or staff member.

16.7.10 All bathing facilities shall be equipped with grab bars that meet the Americans with Disabilities Act standards. All bathing facilities are required to have hard-wired, wireless or battery-operated call bell systems. Bathing facilities shall afford safety and privacy and shall be maintained in a sanitary condition. Facilities initially licensed after July 1, 2003 shall have a toilet and hand-washing sink in each bathing facility.

16.7.11 For all facilities initially licensed on or after May 30, 2002, there shall be at least one (1) bathroom that includes, at a minimum, a toilet and hand washing sink on each floor that has resident bedrooms.

16.8 **Handrails.** Inside and outside stairs and ramps used by residents shall be equipped with handrails and have Life Safety Code compliant guards on each side. [*Class III*]

16.9 **Telephone available.** There shall be a telephone with a listed number available and located in an area designated for residents that provides maximum privacy. For facilities with ten (10) residents or more, a telephone line dedicated for residents’ use, separate from the facility’s business telephone, must be provided. All local calls shall be free of charge to the resident.

16.10 **Water temperatures.** Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. [*Class III*]

16.11 **Living and dining areas.** The facility shall provide a distinct living area and a distinct dining area, with comfortable furnishings appropriate to the use of the room(s). No folding chairs or patio furniture shall be used. These areas shall be well lighted and free of hazards. Living and dining areas shall have window space at a minimum equal to one tenth (1/10) of the floor space.

16.12 **Resident rooms.** The following standards shall apply to resident rooms:
16.12.1 A minimum of one hundred (100) square feet of usable floor space per person shall be provided in a bedroom designed for single occupancy;

16.12.2 A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms;

16.12.3 Usable floor space shall be calculated only for that floor space having a ceiling height of at least six (6) feet, except for the criterion described in Section 16.12.4. Corridors, passageways, vestibules, kitchenettes, closets and alcoves shall be excluded from the calculations of usable floor space. In a unit with a kitchenette, a minimum of thirty (30) square feet shall be deducted for kitchenette space;

16.12.4 Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) can be counted toward usable floor space for the room;

16.12.5 Each resident bedroom shall have a solid door which can be closed. A visual alerting system, such as a knock light or exterior light switch, shall be installed at the bedroom door for any resident who is deaf or severely hard of hearing;

16.12.6 Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum floor space required by Sections 16.12.1 and 16.12.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. All bedrooms must have at least one (1) window in each room that can be opened. In resident rooms with air conditioners, one window must be operable if an egress window is required;

16.12.7 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident's bedroom. No resident room shall be used for access to other rooms or corridors; [Class III]

16.12.8 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing;

16.12.9 Each resident shall be offered a bed and mattress at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds are not acceptable;
16.12.10 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected;

16.12.11 For each bed there shall be offered:

16.12.11.1 A minimum of two (2) dresser drawers;
16.12.11.2 A comfortable non-folding chair in good repair;
16.12.11.3 A bedside table; and
16.12.11.4 A reading lamp.

16.12.12 The facility shall permit and encourage residents to use their own furnishings, space permitting;

16.12.13 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair;

16.12.14 In facilities offering apartment-style or efficiency units, each such unit shall have an "ABC" fire extinguisher readily available. There shall be no portable hot plates;

16.12.15 Kitchen and food preparation areas in apartments shall be located away from possible food contamination sources;

16.12.16 There shall be no more than two (2) beds per room.

16.13 **Laundry room.** The laundry room shall not be located in an area used to prepare or serve food. The room shall be maintained in a sanitary manner and kept in good repair. The facility shall ensure that linen and clothing are regularly laundered and are handled using proper sanitary techniques. Soiled and clean laundry shall be collected, transported and stored separately. Soiled laundry shall not be carried through food preparation areas unless enclosed in laundry bags. Dryers shall be vented to the exterior of the building.

16.14 **Smoking area.** Facilities which permit smoking must have a self-contained, adequately ventilated smoking area that is accessible to residents. *[Class III]*

16.15 **Towel, linen and bedding supplies.** The facility shall have adequate towel, linen, and bedding supplies in addition to those in use, so that a complete linen change is available in the facility at all times.

16.16 **Outside railings.** Open porches and verandahs shall have railings that meet the Americans with Disabilities Act and Office of the State Fire Marshal guidelines. *[Class II/III]*
16.17 **Lighting.** All areas of the facility shall have sufficient illumination. Candles, courtesy oil lanterns and other open-flame methods of illumination are prohibited. [Class III]

16.18 **Requirements for provision of respite care.** Respite or emergency care shall only be provided in beds licensed by the Department.

16.19 **Other standards.** Facilities shall comply with all applicable local, state and federal rules and regulations regarding building safety, fire safety, handicap accessibility and fair housing practices.

16.20 **Local regulations.** Any local regulations which affect the life safety requirements that are more stringent than those referred to in these rules, shall take precedence.

16.21 **Safety requirements:**

16.21.1 Portable space heating devices are prohibited. [Class III]

16.21.2 Extension cords are prohibited unless equipped with a fuse mechanism.

16.21.3 Fireplaces may be installed and used only in areas other than resident sleeping areas and must comply with Standards for Chimneys, Fireplaces and Vents (NFPA 211). In addition, fireplaces shall be equipped with heat-tempered glass or other approved material, or fireplace enclosure guaranteed against breakage up to six hundred fifty degrees (650°) Fahrenheit. If, in the opinion of the Office of the State Fire Marshal, special hazards are present, a lock on the enclosure and/or other safety precautions may be required. [Class III]

16.21.4 Freestanding solid fuel burning stoves located in areas accessible to residents shall be surrounded by a non-combustible railing to prevent residents from coming in contact with the stove. This will not pertain to kitchen stoves primarily used for cooking instead of heating. This regulation does not require that the railing be of such construction as to prevent injury when excessive force is applied to it, but rather to prevent residents from coming into casual contact with the stove. If the stove has a protective covering which will not cause burns on contact, a protective railing is not required. [Class III]

16.21.5 Each facility shall develop a fire safety plan in conjunction with, and approved by, local or state fire authorities. [Class III]

16.21.6 A plan noting emergency steps to be taken, evacuation procedures, telephone numbers of police, fire, ambulance, duly authorized licensed practitioners and other individuals deemed necessary shall be posted conspicuously in the home. [Class III]
16.21.7 Timed drills, as described in the applicable chapters of the National Fire Protection Association Life Safety Code, must be used to determine a residential care facility’s capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the National Fire Protection Association Life Safety Code 101A or when timed drills are not required pursuant to the Life Safety Code. When a new resident has participated in a timed drill in another residential care facility within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident’s new facility for a period of up to 4 months.

A record shall be kept on a form provided by the Department showing the date and time of each drill. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. [Class II]

16.21.8 If, for any reason, the residents are evacuated from the facility other than a planned fire drill, the administrator or a facility representative shall notify the Department at 1-800-383-2441 and the Office the State Fire Marshal immediately after residents are safely evacuated.

16.21.9 Smoke detectors shall be functional at all times. [Class I]

16.22 Water supply. The water supply shall be adequate, of a safe and sanitary quality and from a source, which meets applicable State and local laws and regulations. The following standards shall apply: [Class III]

16.22.1 Water not piped directly from its source shall be transported, handled, sorted and dispensed in a sanitary manner.

16.22.2 Adequate supplies of hot and cold water shall be provided at all hand washing facilities and where equipment and utensils are washed, unless otherwise approved in writing by the Department.

16.22.3 Water supply systems shall be reviewed and approved according to Chapter 231, Drinking Water Rules, adopted by the Department.

16.22.4 The source of all water supplies must be protected from pollution and treated in a manner approved by the Department.

16.22.5 A private water supply shall be tested annually and a satisfactory result must be obtained.
16.23 Sewage disposal.

16.23.1 All water-carried sewage shall be disposed of by means of a public sewerage system or an approved sewage disposal system which is constructed and operated in conformance with applicable State and local laws, ordinances and regulations. [Class III]

16.23.2 Non-water-carried sewage disposal facilities shall not be used, except where water-carried disposal methods have been determined by the Department to be impractical. Under such conditions, only facilities which have been approved by the Department shall be used and operation shall be in conformance with applicable State and local laws, ordinances and regulations.

16.24 Plumbing. All plumbing shall be maintained and comply with applicable state and local plumbing laws, ordinances and rules. [Class III]

16.25 Garbage and rubbish. All refuse collected in common areas or from resident rooms shall be stored in washable, rodent-proof, covered containers pending removal. [Class III]

16.26 Insect and rodent control. There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. All openings to the outer air shall be protected against the entrance of insects by self-closing doors, closed windows, screening or other effective means. Doors and windows used for ventilation must be screened.

16.27 Poisonous and toxic materials. When not in use, poisonous and toxic materials such as household cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Household bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. [Class III]

16.28 Animals kept as pets.

16.28.1 Household pets, except fish in aquariums and service animals (e.g., guide dogs), shall not be permitted in common dining areas during meals. [Class III]

16.28.2 No animals, except for service animals (e.g., guide dogs), shall be permitted in common food preparation areas. [Class III]
16.28.3 There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly. [Class III]
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED
June 1, 2006 [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _________________________________ (hereinafter “the Provider”) and you, ___________________________________. This contract describes your financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a customized addendum but these additional provisions may not conflict with or replace the use of the standard contract. The intent of having a standard contract in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you and the Provider agree as follows:

I STANDARDS

The Provider will help to further your independence and respect your privacy and personal choices, including your choice to continue to reside here for as long as the Provider and program, as it is fundamentally designed, is able to meet your needs. The Provider’s programs will be consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services, the Provider will assist you in making other arrangements including moving somewhere else, if necessary.

II PROVIDER LICENSE

The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the ______________. This Provider is licensed as follows (check one):

- [ ] Level I Residential Care Facility
- [ ] Level II Residential Care Facility
- [ ] Level III Residential Care Facility
- [ ] Level IV Residential Care Facility
- [ ] Level I PNMI Residential Care Facility
- [ ] Level II PNMI Residential Care Facility
- [ ] Level III PNMI Residential Care Facility
- [ ] Level IV PNMI Residential Care Facility
- [ ] Type I Assisted Living Program
- [ ] Type II Assisted Living Program
This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

III APPENDICES

The following Appendices are attached and made a part of this contract:

- Appendix A: Admissions Policy
- Appendix B: Your Rights
- Appendix C: Grievance Policy
- Appendix D: Tenancy Obligations (check if this applies)
- Appendix E: Additional terms in Customized Addendum (check if this applies)
- Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider

IV ADMISSION POLICY

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

V SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE

A. You agree to purchase:

- Housing and Services.
- Housing Only.

B. You agree to pay the following current rate to the Provider:

- Daily rate of $_______
- Monthly rate of $_______

The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

The landlord is _____________________________.

The amount of your current monthly rent is _________.

D. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

13. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
14. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and
15. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:

1. **Personal Supervision.**
   - Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
   - Staff will accompany you to medical appointments
   - The Provider provides an escort for regular travel
   - The Provider has qualified staff in the building 24-hours/day
   - Other ________________________________
   - Additional provisions: See Appendix E

2. **Assistance with activities of daily living.** (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)
   - Walking
   - Changing position in bed
   - Transferring from place to place
   - Dressing
   - Eating
   - Using the bathroom
   - Bathing
   - Personal hygiene, such as help washing your hair
   - Other ________________________________
   - Additional Provisions: See Appendix E

3. **Incidental activities of daily living.**
   - Using the telephone
   - Handling your finances
   - Banking
   - Shopping
   - Light housekeeping
   - Heavy housekeeping
   - Getting to appointments
   - Barber/beautician services
   - Other ________________________________
   - Additional Provisions: See Appendix E
4. Medication assistance.
   - Obtaining medications from the Pharmacy of your choice:
     - Ordered by Provider
     - Delivered by the Pharmacy
     - Ordered by you/family member
     - Picked up by Provider
     - Picked up by you/family member
   - Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)
   - Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for example, information that they have been administered at the right time and in the right dose
   - Other ______________________________
   - Additional Provisions: See Appendix E

5. Food Service.
   - Meal preparation (including the cost of food) ______ times each day
   - Meal preparation (food purchased separately by you) ______ times each day
   - Nutritious between-meal snacks ______ times each day
   - Special diets ordered by your physician as follows:
     - Shopping for groceries you purchase
     - Meal planning
     - Other ______________________________
   - Additional Provisions: See Appendix E

6. Transportation services.
   - Arranging transportation (cost of transportation included) ______ miles roundtrip
   - Arranging transportation (cost of transportation not included)
   - Transportation without escort to medical appointments within ______ miles roundtrip
   - Transportation with escort to medical appointments within ______ miles roundtrip
   - Other ______________________________

7. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:
   - None
   - Skilled nursing services provided by a registered professional nurse.
   - Registered professional nurse who oversees staff and coordinates your health care needs.
8. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

- [ ] All housing costs (there will be no extra charges)
- [ ] All housing costs except:
  
  ____________________________________________________
  ____________________________________________________
  ____________________________________________________

- [ ] Semi-private room
- [ ] Shared bathroom
- [ ] Private room
- [ ] Private bathroom
- [ ] Efficiency apartment
- [ ] One Bedroom Apartment
- [ ] Two Bedroom Apartment
- [ ] Other
- [ ] Additional Provisions: See Appendix E
- [ ] You have a lease agreement with a landlord other than the Provider: See Appendix F

9. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

- [ ] None
- [ ] Non-prescription analgesics and antacids
  
  ______________________________

- [ ] Pillows, sheets, linens, towels
- [ ] Laundry supplies and equipment
- [ ] Laxatives
- [ ] Thermometers
- [ ] Non-prescription skin creams/lubricants
- [ ] Mouthwash
- [ ] Toothpaste
- [ ] Other non-prescription ointments: ______________________________
- [ ] Shampoo
- [ ] Soap
- [ ] Facial tissue
- [ ] Toilet tissue
- [ ] Paper towels
- [ ] Incontinence supplies
- [ ] Other: ______________________________

10. Additional Services

- [ ] See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.
See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame: _________________________. If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.

B. Source of payment for services covered by the daily/monthly rate:
   - Self-pay
   - Self-pay and billing to a third party: ____________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:
   - Self-pay
   - Other ____________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.
   - There is a security deposit. This security deposit will not exceed one month’s rent (currently $__________), and will be refunded to you within thirty (30) days from date of discharge/death.
   - The following costs may be deducted from the security deposit:
     ______________________________
     ______________________________

   - Security deposits are part of your separate lease with the Landlord.

G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.
   - In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.
   - In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days...
in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.
IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but
not limited to, rate and charge changes, responsibilities, services to be provided or any other items
included in this contract. The thirty (30) days notice will not be required if you are the one requesting
additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the
date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be
considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by
delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract,
have been explained to you and you have signed that attachment.
B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance
policy and any tenancy obligations (See Appendix A, C and D).
C. You have made arrangement for the management of your affairs, either personal and/or financial,
as follows:
   ■ Manage own affairs
   ■ Durable Financial Power of Attorney
   ■ Health Care Power of Attorney
   ■ Representative Payee
   ■ Guardian
   ■ Conservator
   ■ Trustee
   ■ Advance Directive/Living will
   ■ Other
   You agree to supply copies of all relevant information about those individuals who are
responsible for your affairs as they relate to your care under this contract.

XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in
Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is
agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations
under this contract consistent with law.
XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________

___________________________________
Signature of Provider Representative

_______________________________
Name of Provider

_______________________________
Address

__________________________________
Your Name

__________________________________
Your Signature or Signature of Your Agent

_______________________________
Address

__________________________________
Telephone Number
This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

M. Your Landlord is: ____________________________.

N. Your current monthly rent is:____________________.

O. Among other things, your lease provides that you will receive the following (check all that applies):

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

______________________________________________________
______________________________________________________
______________________________________________________

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other

D. Your lease is attached here for reference.
REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF ASSISTED HOUSING PROGRAMS:

Level I Private Non-Medical Institutions
Part of 10-144 Chapter 113
Effective Date (Last Amended): August 20, 2008

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF LICENSING AND REGULATORY SERVICES
State House Station 11
41 Anthony Ave.
Augusta, ME 04333-0011
(207) 287-9300
1-800-791-4080
TDD 1-800-606-0215
dlrs.info@maine.gov
Level 1 Private Non-Medical Institutions

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**Statutory Authority**

A
Section 1

1 PURPOSE

These rules establish minimum standards for the licensing of Level I Private Non-Medical Institutions. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.

These rules governing the licensing and functioning of Assisted Housing Programs – Level I – Private Non-Medical Institutions – shall become effective July 1, 2004.
Section 2

Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility, or a private non-medical institution.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and divers ional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Divers ional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 “Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I - an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II - an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Professional Nurse; and/or
2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.

2.11 “Assisted Living Services” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration, or assisted housing services with the addition of medication administration and nursing services, defined as follows:

2.11.1 “Administration of medications” means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;

2.11.2 “Nursing services” means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

2.12 “Certified Nursing Assistant (CNA)” means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.13 “Certified Nursing Assistant/Medications (CNA/M)” means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.14 “Deficiency” means a violation of State licensing regulations.

2.15 “Dementia” means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.
2.16 “Department” means the Maine Department of Health and Human Services.

2.17 “Directed Plan of Correction” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 “Distinct Part” means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part.” The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

2.19 “Duly Authorized Licensed Practitioner” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.

2.20 “Emergency” means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 “Independent Housing with Services Program” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.
2.28 “Instrumental Activities of Daily Living (hereinafter IADLs)” includes, but is not limited to, preparing or receiving of a main meal, taking medication, using the telephone, handling finances, banking, shopping, routine housework, laundry and getting to appointments.

2.29 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.

2.30 “Licensee” means the person to whom a license is issued.

2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.
2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.40 “Private Non-Medical Institution” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Private non-medical institutions are a type of residential care facility that receives MaineCare funds and complies with additional requirements as specified in various sections of these rules. A PNMI provides housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes, a supported living arrangement certified by the Department of Behavioral and Developmental Services, or a facility licensed as a residential care facility. Following are the types of private non-medical institutions:

2.40.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.40.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.40.3 Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.40.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.41 “Provider” means the licensee.

2.42 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.43 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.44 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.45 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.

2.46 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.
2.47 "Repeated Deficiency" means a violation of a rule more than once in a two (2) year period.

2.48 "Resident" means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.49 "Resident Assessment Instrument (RAI)" is the assessment tool approved by the Department for use by the provider to obtain an accurate standardized, reproducible assessment of each resident’s functional capacity. It consists of the Minimum Data Set – Residential Care Assessment instrument (MDS – RCA), the training manual for the MDS-RCA tool, and any updates provided by the Department.

2.50 "Resident Rights" means those rights enumerated in Title 22 M.R.S.A. §7921 et seq., 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also enumerated in Section 5 of these regulations.

2.51 "Residential Care Facility" means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:

2.51.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.51.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.51.3 Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.51.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.52 "Residential Services Plan" means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.
2.53 “Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.53.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.53.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

2.54 “Scattered Sites” means facilities with licensed private non-medical institution beds at scattered locations serving a minimum of four eligible members, as long as the service provided consistently fits within the definition of the applicable appendices in accordance with Chapter III, Section 97, of the MaineCare Benefits Manual.

2.55 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person preparing the medication for the individual.

2.56 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.57 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department, which describes deficiencies in complying with these regulations.

2.58 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department

2.59 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.60 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.61 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 Responsibility for compliance. The applicant/licensee shall comply with these regulations.

3.2 Unlicensed Level I private non-medical institution (PNMI). No person, firm, partnership, association, corporation or other entity shall manage or operate a Level I private non-medical institution without a license.

3.3 Person license issued to. The license is only valid for the named licensee(s).

3.4 Application and licensure.

3.4.1 Application required. The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which the applicant has taken no action after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Private non-medical institutions - $10.00 each licensed bed.

3.4.2 Admission and scope of services policy. Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of nursing Services consistent with applicable state and federal law.

3.4.3 Additional licensing requirements. Prior to the issuance of a license and prior to re-licensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A Private Non-Medical Institution that has one (1) to three (3) beds must comply with the one-family and 2-family dwelling chapter of the Life Safety Code.

3.4.3.1.2 A residential care facility or private non-medical institution with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board
3.4.3.1.3 A Private Non-Medical Institution with more than sixteen (16) beds must comply with the sections of the Life Safety Code that apply to large facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated thereunder, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);

3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing;

3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq. and

3.4.3.5 Provide evidence that all taxes applicable to PNMI's are current and up-to-date.

3.5 **Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 **Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 **Issuance of license.** A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the applicant, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license. Any provider who is issued a license for scattered sites will have all the sites listed on the single license.
3.8 **Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

3.9 **Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

- **3.9.1** The physical location;
- **3.9.2** The structure or management and ownership;
- **3.9.3** In facilities providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program, residential care facility or private non-medical institution; and
- **3.9.4** The administrative and regulatory burdens and benefits of granting a given number of licenses.

The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 **Adult day services programs.** When an adult day services program is physically located in an assisted living program, residential care facility or private non-medical institution, separate licenses shall not be required. The adult day services programs shall comply with the Regulations Governing the Licensing and Functioning of Adult Day Services Programs and licensed capacity will be reflected on the license.

3.11 **Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities, adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.
3.12 **Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.

3.13 **Conditional license.** The department may issue a conditional license when the individual or agency fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.

3.14 **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program, residential care facility or private non-medical institution is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.
3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post a copy of the license at each of its licensed locations, where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level I PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by from the District Court authorizing entry and inspection. An application for a Level I private non-medical institution license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.

3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

3.20.1 Issuance of a Conditional license;

3.20.2 Refusal to issue or renew a license;

3.20.3 Revocation or suspension of a license; or

3.20.4 Refusal to issue a Provisional license.

3.21 **Renewal.** The department must receive a renewal application thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;

3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.
3.22 **Actions requiring prior written approval.** When proposed construction, renovation, or alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 **Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 **Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the department. See also Section 4.10 of these regulations.

3.25 **Rates and Contracts.**

3.25.1 **Rates.** Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 **Signing a contract.** Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the department attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.

3.25.3 **Provisions of contract.** The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements: Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.
3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar day’s notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision, which provides for the payment of attorney fees or any other cost of collecting payments from the resident.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;

3.25.3.6.2 Tenancy obligations, if they exist;

3.25.3.6.3 Resident rights; and

3.25.3.6.4 Copy of the admissions policy.

3.25.3.7 The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.
3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 **Information to residents.** The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of facility and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;

3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6 The program’s staff qualifications.

3.27 **Information for residents of Alzheimer’s/dementia units.** When a provider operates a unit meeting the requirements of a Designated Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

3.27.5 A description of family involvement and the availability of family support programs;

3.27.6 A description of security measures provided by the facility;

3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.
3.28 **Refunds.** Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from third a party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.

3.29 **Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items, which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. *(Class IV)*

3.30 **Tenancy obligation.** Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.
3.31 Administrative and resident records.

3.31.1 Confidentiality. All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 Location of records. All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 Inspection of records. All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 Record retention. All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.

3.31.5 Storage of records. Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 Disaster plan. Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.33 Confidential information. Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 Inspections required. The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private.

4.2 Frequency and type of inspections. An inspection may occur:

4.2.1 Prior to the issuance of a license;

4.2.2 Prior to renewal of a license;

4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;

4.2.4 When there has been a change or proposed change in administrator, physical plant or services;

4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;

4.2.6 For routine monitoring of resident care; or

4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 Licensing records kept by the department. The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 Complaints. The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.
4.5 **Enforcement process.**

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.

4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.

4.5.3 Failure to correct any deficiency (ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.

4.5.4 **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program or Private Non-Medical Institution without a license;

4.6.2 Operation of an assisted living program or Private Non-Medical Institution over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.
4.7 Intermediate sanctions. The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

4.7.1 The assisted living program, residential care facility, or private non-medical institution may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.

4.8 Financial penalties.

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law
that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.

4.8.5

The amount of any penalty to be imposed shall be calculated according to the following classification system:

4.8.5.1 Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1;

Operation of an assisted living program or residential care facility over licensed capacity, or

Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.

4.8.5.2 Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2;

Failure to submit a POC within ten (10) working days after receipt of an SOD; or

Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.

4.8.5.3 The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3;

The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.

4.8.6 The department may impose a penalty upon a licensee of a Level I PNMI for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level I PNMI.

4.8.7 Failure to comply with 22 M.R.S.A. §7904 (6) regarding time drills, as further described in Section 13.3, commits a civil violation for which a
forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

4.8.8.1 In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.

4.8.8.2 In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.

4.8.8.3 The department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program, residential care facility, or private non-medical institution.

4.9.2 If, at the expiration of a full or provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a conditional license, or change a full license to a conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

4.9.3 Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program, residential care facility, or private non-medical institution, the department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184, subsection 6.
4.9.4 Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program, residential care facility, or private non-medical institution, or conduct or practices detrimental to the welfare of persons living in or attending the facility/program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375 §10051.

4.9.5 Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition the Superior Court to appoint a receiver to operate the assisted living program, residential care facility, or private non-medical institution in the following circumstances:

4.9.5.1 When the assisted living program, residential care facility, or private non-medical institution intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;

4.9.5.2 When an emergency exists which threatens the health, security or welfare of residents; or

4.9.5.3 When the assisted living program, residential care facility, or private non-medical institution is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.
4.10 **Appeal rights.** Any assisted living program, residential care facility, or private non-medical institution aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of Licensing and Regulatory Services, Community Services Programs, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.1 Issue a conditional license;

4.10.2 Amend or modify a license;

4.10.3 Void a conditional license;

4.10.4 Refuse to issue or renew a full license;

4.10.5 Refuse to issue a provisional license;

4.10.6 Stop or limit admissions;

4.10.7 Issue a directed POC;

4.10.8 Affirm or modify an assessment of penalties after an informal review;

4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or

4.10.10 Deny a request for a waiver of a rule.

4.11 **Surveillance and Utilization Review:** The provider will cooperate with the department’s Surveillance and Utilization Review (SUR) Unit and/or the department’s authorized designee who carries out a program of safeguarding against unnecessary or inappropriate utilization of, and excess payments for, care and services available under MaineCare and assessing the quality.

4.12 **Operating without a license**

4.12.1 **License required.** A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level I PNMI.

4.12.2 **Civil penalty for operating without a license.** A person, firm, partnership, association, corporation or other entity who operates a Level I PNMI without a license commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.
4.12.3 **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.12.

4.12.4 **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.12.

4.12.5 **Jurisdiction.** The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.12.

4.12.6 **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.12 occurred.

4.12.7 **Right of entry.** To inspect the premises of a Level I PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.12.8 **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level I PNMI with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.12. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.12.9 **Noninterference.** An owner or person in charge of an unlicensed Level I PNMI may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

4.12.10 **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.12 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.12.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.12, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

4.12.10.2 In an action under section 4.12, when a permanent injunction
has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

Resident Rights

5.1 **Resident rights.** The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices.  

5.2 **Freedom of choice of provider.** For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice.  

5.3 **Rights regarding transfer and discharge.** Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution;  

5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others;  

5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there;  

5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident;  

5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed;  

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered.  

5.4 **Transfer or discharge.** When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. Each notice must be written and include the following:
5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; [Class IV]

5.4.2 The effective date of the transfer or discharge; [Class IV]

5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department Behavioral and Developmental Services (BDS)); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of an assisted living program, residential care facility or private non-medical institutions shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations list advocacy services which may be available to consumers. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These
documents shall be maintained and available for review upon request by the Department. [Class IV]

5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the consumer can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 Right to manage financial affairs. Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 Right to freedom from abuse, neglect or exploitation. Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 Rights regarding restraints and aversive conditioning. There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]
5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the *Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation* and the *Regulations Governing the Use of Restraints in Community Settings*. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.11.3 For any resident who is a client of the Department of Behavioral and Development Services due to his/her mental illness, the facility/program shall comply with the *Rights of Recipients of Mental Health Services*, promulgated and enforced by the Department of Health and Human Services (formerly known as the Department Behavioral and Development Services BDS)). [Class I, II, III, IV]

5.12 Right to confidentiality. Residents’ records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other person except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from the facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign, and date a written consent which lists individuals, groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 Right to refuse to perform services for the facility. Residents may refuse to perform services for the facility. [Class IV]

5.14 Right to privacy and consideration. Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]
5.15 **Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 **Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 **Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 **Couples.** A couple residing in an assisted housing program has the right to share a room. [Class IV]

5.19 **Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services, which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 **Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment which has not been consented to by a competent resident. [Class IV]

5.21 **Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 **Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to, Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]
5.23 Notification of Residents Rights. The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative, within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the change. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. [Class IV]

5.24 Bill of rights for persons with mental retardation. Facilities/programs serving persons with mental retardation shall post and comply with the Bill of Rights for Persons with Mental Retardation, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

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

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

Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made. Mandated reporters shall contact the Department of Health and Human Services ((800) 383-2441) immediately after receiving and/or obtaining information about any rights violations. [Class IV]

5.26 Reasonable modifications and accommodations. To afford individuals with disabilities the opportunity to reside in an assisted living program, residential care facility, or private non-medical institution the licensee shall:

5.26.1 Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]
5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 Right of action. In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 Right to appeal an involuntary transfer or discharge. The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the facility unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director, Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. [Class IV]

5.29 Resident adjudicated incompetent. In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations. [Class IV]

5.30 Resident councils

5.30.1 Residents of assisted living programs, residential care facility, or private non-medical institution have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:
5.30.3.1 To be provided with a copy of the facility’s policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved; [Class IV]

5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights; [Class IV]

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement; [Class IV]

5.30.3.4 To help identify residents’ problems and recommend ways to ensure early resolution; [Class IV]

5.30.3.5 To inform the administrator of the opinions and concerns of the residents; [Class IV]

5.30.3.6 To find ways of involving the families and residents of the facility; [Class IV]

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and [Class IV]

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. [Class IV]

5.31 Right to a service plan. The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies. [Class IV]
Section 6

Alzheimers'/Dementia and Other Specialty Unit Standards

6.1 Alzheimers'/Dementia Care Units. A facility or unit designated as an Alzheimers'/Dementia Care Unit shall comply with the following regulations and the facility must have received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimers'/Dementia unit, the resident’s individual record must contain:

6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician’s diagnosis of Alzheimers’ disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimers'/dementia care unit shall have:

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways which allow residents to ambulate, but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;
6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and

6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 Physical environment. The designated Alzheimers'/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimers’/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or
6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.

6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimers’/Dementia Care Units. All facilities with Alzheimers’/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.4.3 Social activities (e.g., games, music, reminiscing, etc.);

6.4.4 Crafts (e.g., decorations, pictures, etc.);

6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.4.7 Spiritual activities.

6.5 Pre-service training for Alzheimers’/Dementia Care Units. For pre-service training, all facilities with Alzheimers’/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimers’ disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimers’ Disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimers’ Disease and related dementias;

6.5.2 Communication basics;

6.5.3 Creating a therapeutic environment;
6.5.4 Activity focused care;
6.5.5 Dealing with difficult behaviors; and
6.5.6 Family issues.

6.6 Specialty Units other than Alzheimer's'/Dementia

6.6.1 Design standards. The unit shall be designed to accommodate residents who will be admitted to the unit.

6.6.2 Program standards: Program standards shall be in accordance with accepted industry standards.

6.7 Therapeutic activities. All facilities with specialty care units shall offer the following types of individual or group activities in accordance with the assessed needs of the residents:

6.7.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);
6.7.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);
6.7.3 Social activities (e.g., games, music, reminiscing, etc.);
6.7.4 Crafts (e.g., decorations, pictures, etc.);
6.7.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);
6.7.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and
6.7.7 Spiritual activities.

6.8 Pre-service training for Specialty Care Units. For pre-service training, all facilities must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals specific to that specialty. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to care, the eight (8) hours of classroom orientation shall include the following topics:

6.8.1 A general overview of the related specialty;
6.8.2 Communication basics;
6.8.3 Creating a therapeutic environment;
6.8.4 Activity focused care;
6.8.5 Dealing with difficult medical issues and/or behaviors; and
6.8.6 Family issues.
Section 7

Medications and Treatments

7.1 **Use of safe and acceptable procedures.** The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [Classes I/II/III]

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [Classes I/II/III]

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. The kit. Documentation of training shall be included in the employee record.

7.1.4 If a resident has Diabetes unlicensed persons must be trained by a registered professional nurse in regard to the management of persons with diabetics. The registered professional nurse must provide in-service training and documentation to include: Documentation of training shall be included in the employee record. [Class III]

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation;

7.1.4.6 Treatment and prevention of insulin reaction including signs/symptoms;
7.1.4.7 Foot care;

7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and

7.1.4.9 Standard Precautions.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.2 Self-administration of medications. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner, and a facility representative.

7.3 Medication storage. Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. [Class III]

7.4 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or use of medical equipment not specifically outlined in these Regulations, there must be documentation in the Employee file.

7.5 Whenever employees of a assisted living program, residential care facility, or private non-medical institution are in serviced or taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
Section 8

Scope of Licenses

8.1 **Licensing of facilities with 2 or fewer residents.** Licensing of Level I facilities for 1-2 beds is optional under state law. This means that facilities may have two residents without a license. A Level I facility with one or two residents may voluntarily apply for and receive a license under these regulations if it meets all applicable regulations.

8.2 **Facilities licensed as children’s homes.** The Department may exempt a licensed children’s home from requiring a Level I license once a resident reaches the age of eighteen (18) if the resident has not completed his/her prescribed program of treatment, care or education, or discharge from the facility will occur within nine (9) months of the date the resident turned eighteen (18). If the facility’s purpose is to treat or care for children, and the above requirements are met, the Department may grant a written exemption from licensure in order for the adult resident’s income to be supplemented.

8.3 **Dual licensure.** No facility shall be granted a Level I license, and any previously granted Level I license may be subject to revocation, if another license or approval is in effect or granted, unless the Department has determined that dual licensure will not have an adverse impact on the residents.

8.4 **Maximum number of adult residents.** The maximum number of beds for which a facility may be licensed will be determined by the Department, according to the regulations set forth herein. Respite care may only be provided in licensed beds.

8.5 **Physical plant changes.** No alterations in the size or arrangement of the physical plant, location of resident rooms, change in the heating system, water supply system, sewage disposal system, utilities or similar systems shall be made without the prior written approval of the Department in accordance with these regulations.

8.6 **Residents under the age of 18.** A person who is seventeen (17) years of age may be a resident of a Level I facility without the home being required to be licensed as a children’s home, if the Department determines in writing prior to placement that such a placement is in the best interest of that person. The general physical and mental health of all residents of the facility shall be considered in this decision.

Verification of Credentials

8.7 **Licensed Staff.** Prior to employing licensed staff, the facility must verify that the person has a valid and current license.

8.8 **Employing CNA’s and CNA-M’s.** Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.
8.9 **Prohibited Employment.** The facility may not hire as unlicensed assistive personnel as defined in section 2.60 an individual who is prohibited from employment as a certified nursing assistant as outlined below:

8.9.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.9.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.9.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.9.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry or Certified Nursing Assistants.

8.10 **Time Limit on Consideration of Prior Criminal Conviction:** Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

8.10.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;

8.10.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.11 **Exception:** The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812-G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.
8.12 **Notification:** A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Provider and Staff Qualifications and Responsibilities

9.1 Provider’s age. The provider shall be at least twenty-one (21) years of age. [Class III]

9.2 Education, experience and training. The provider shall submit satisfactory evidence regarding education, experience and training to meet the needs of the residents to be served.

9.3 Qualifications of the provider. The provider must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. In making this determination, the Department may consider:

9.3.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the provider.

9.3.2 Understanding of and compliance with resident rights.

9.3.3 Any information reasonably related to the ability to provide safe and compassionate services.

9.4 Responsibilities. The provider is responsible for the overall operation of the facility and shall:

9.4.1 Ensure that staff are qualified, adequately trained and competent and are performing their duties consistent with all regulations and provisions of law;

9.4.2 Make work assignments according to the qualifications of staff and the number and needs of the residents; and

9.4.3 Assure that each resident’s abilities and needs are adequately assessed and that each resident is offered all necessary services.

9.4.4 If time studies are required, the Administrator shall be responsible to see they are done in compliance with paragraph 97.07-8 of Chapter II, Section 97, of the MaineCare Benefits Manual.

9.5 Qualifications of other staff. Other caregivers must meet the following standards:

9.5.1 Any person who is given supervisory responsibility over residents must be a capable and dependable person at least eighteen (18) years of age, who is not a resident. Such a person, or the provider, will be available whenever a resident is in the facility. A record of the name, address and telephone number of persons who provide supervision in the absence of the provider shall be kept on file in the facility and shall be made available to the Department upon request. This person will be instructed regarding evacuation procedures for the facility. [Class I, II, III, IV]
9.5.2 Residential care staff shall attend and show evidence of successful completion of any training that the Department determines to be necessary. [Class II]

9.5.3 No provider shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease that would threaten the health and welfare of the residents, unless Standard Precautions reduce or eliminate exposure or risk to the residents. [Class I, II, III, IV]

9.6 Consultation services.

9.6.1 Pharmacist consultant services. The Department reserves the right to require pharmacist consultation in the event that serious or multiple deficiencies in medication administration are noted.

9.6.2 Registered nurse consultant services. The Department reserves the right to require licensed nurse consultation in the event that serious or multiple deficiencies in the health care of residents are noted.

9.6.3 Consultant dietitian services. The Department reserves the right to require a qualified consultant dietitian in the event that serious or multiple deficiencies in food service are noted.
Section 10

Health Care and Access to Services

10.1 Medical and health care. The provider shall coordinate appropriate health care services and assist residents to access them. Each resident shall have access to a duly authorized licensed practitioner of his/her choice. Each resident shall have an annual physical, unless otherwise specified by his/her duly authorized licensed practitioner. [Class II]

10.2 Transportation. The facility shall provide or arrange transportation to medical and other appointments.

10.3 First aid kit. A first aid kit containing supplies for treatment of minor injuries, such as cuts, scrapes or first-degree burns, shall be available in the facility. All staff shall be instructed in the use of any item in the kit.

10.4 Nursing services. Nursing services are to be provided by professional nurses pursuant to Title 32 M.R.S.A. §2102, subsection 2. This includes coordination and oversight of assisted living services by unlicensed assistive personnel.

10.5 Resident Assessment/Re-assessment. The facility shall use the Resident Assessment Instrument (RAI), or other assessment instrument as may be required by the agency providing the MaineCare funding.
Section 11

Management of Resident Personal Accounts

11.1 **Written permission.** The licensee or his/her representative may only manage personal accounts for a resident if requested to do so, in writing, by the resident or the resident’s legal representative.

11.2 **Documentation.** The provider must maintain and document an accounting of the funds, with supporting documentation for each expenditure that exceeds $2.00.

Under no circumstances shall the personal funds of any resident, beyond what the provider receives for monthly payments, be used for the operating costs of the facility or the personal expenses of the provider or his/her representative.

11.3 **Commingling.** Residents’ personal funds shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility.
Section 12

Resident and Other Records

12.1 **Summary sheets.** There shall be a summary sheet maintained for each resident that includes applicable information, including the resident’s name, birth date, date of admission, duly authorized licensed practitioner’s name, address and telephone number, nearest relative or friend’s name, address and telephone number, person to be notified in an emergency, their name, address and telephone number, day program name, telephone number, address and contact person, date of discharge or death and significant medical/social issues.

12.2 **Resident records.** There shall be a record maintained for each resident that contains applicable information on physical and mental condition, behavior, mood, eating habits, incidents or accidents, documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, and the dates of medical examinations, other medical and dental treatment and drugs prescribed.

12.3 **Discharge summary.** Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall include, but not be limited to the following:

12.3.1 Reason for discharge; and

12.3.2 Targeted living arrangement.

12.4 **Record of personal property.** The provider shall maintain a list of each resident’s property including items of personal value.

12.5 **Employee records for a corporation, partnership, association or an entity other than an individual.** For any provider that is a corporation, partnership, association or an entity other than an individual, the Department may request that reasonable personnel policies and records be kept documenting that employees have been trained and are competent and performing their duties consistent with these regulations.
Section 13

Safety Standards

13.1 Fire safety plans. Each facility must have a fire safety plan. The fire safety plan and any changes in the plan are to be developed in conjunction with and approved by, local or state fire authorities. [Class III]

13.2 Elements of a fire safety plan. The plan shall note steps to be taken, location of emergency exits, evacuation procedures and the telephone numbers of police, fire, ambulance and duly authorized licensed practitioners or other individuals to contact in an emergency. The fire safety plan shall be posted conspicuously in the facility.

13.3 Drills or rehearsals. Drills or rehearsals of the emergency steps to be taken shall be conducted at irregular times of the day, at least six (6) times per year spaced throughout the year. Two of the six (6) drills must be conducted while residents are asleep. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. [Class II]

13.4 Record of drills or rehearsals. A record shall be kept on a form provided by the Department showing the date and time of each drill. [Class II]

13.5 Free-standing, solid fuel burning stoves. Freestanding, solid fuel burning stoves (including wood and coal) are permitted in living areas, but not in bedrooms. They must be installed within NFPA No. 211 guidelines or as regulated by the Solid Fuel Board of Maine. Guidelines contained in NFPA No. 211 may be obtained by contacting the Office of the State Fire Marshal. [Class III]

13.6 Portable electric heaters. Portable closed liquid electric heaters may be used if approved by the Office of the State Fire Marshal. No radiant or quartz heaters shall be used. [Class III]

13.7 Extension cords. Extension cords are prohibited, except for those cords that have a fuse mechanism. [Class III]

13.8 Smoke detectors. Each smoke detector must be in working order. [Class I]
Section 14

Nutrition and Health

14.1 Quality and quantity of food. The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

14.2 Resident participation in meal planning and preparation. Residents shall be encouraged to participate in food planning and preparation, as appropriate.

14.3 Second-grade products. Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods shall not be used. (Class III)

14.4 Food supplies. Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.

14.5 Residents with communicable diseases. No resident with a communicable disease shall be admitted if that resident’s condition or behavior endangers the health and welfare of other residents and no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.
Section 15

Living Area and Sleeping Accommodations

15.1  **Living and dining areas.** Residents shall be provided an area for dining and relaxation sufficient in size to accommodate the provider’s family and the residents. Comfortable, non-folding chairs must be provided. The rooms shall be well lighted and free of hazards. A television set for use by the residents shall be available.

15.2  **Bedrooms.**

15.2.1  For facilities initially licensed on or after May 29, 1998, a minimum of one hundred (100) square feet of usable floor space shall be provided in a single bedroom. A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

15.2.2  For all facilities initially licensed before May 29, 1998, a minimum of eighty (80) square feet of usable floor space shall be provided in a single bedroom. A minimum of seventy (70) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

15.2.3  Usable floor space shall be calculated only for that floor space having a ceiling height of a minimum of six (6) feet, except as provided in Section 15.2.4. Corridors, passageways, vestibules, alcoves, closets and wardrobe space shall be excluded from the calculations of usable floor space.

15.2.4  Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) may be counted toward usable floor space for the room.

15.2.5  There shall be no more than two (2) people in each room. Couples who are both residents of the facility have the right to share a room.

15.2.6  Each resident bedroom shall have a solid door that can be closed for privacy.

15.2.7  Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum required floor space per Sections 15.2.1 and 15.2.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. In air-conditioned buildings, at least one window in each room must be able to be opened.
15.2.8 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident bedroom. No resident room shall be used for access to other rooms or corridors. *(Class III)*

15.2.9 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing.

15.2.10 Each resident shall be offered a bed and mattress that is at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds do not meet this requirement.

15.2.11 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected.

15.2.12 For each bed there shall be offered:

15.2.12.1 At least two (2) dresser drawers;

15.2.12.2 A comfortable non-folding chair in good repair;

15.2.12.3 A bedside table; and

15.2.12.4 A reading lamp.

15.2.13 The facility shall permit and encourage residents to use their own furnishings, space permitting.

15.2.14 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair.

15.2.15 There must be a direct source of heat to each bedroom.

15.2.16 There shall be an adequate towel, linen and bedding supply in addition to those in use, so that a complete linen change is available in the facility at all times.

15.2.17 Residents shall not share bedrooms with members of the provider’s family who are not receiving assisted living services, unless the facility obtains written permission from the Department. Permission will be granted if the arrangement is in the resident’s best interest and is acceptable to the resident or the resident’s guardian or conservator.

15.3 Renting space. The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.
Section 16

Sanitation and Safety

16.1 Maintenance. The facility must be kept clean and shall be maintained in a condition ensuring the health and safety of residents. All refuse collected in common areas or from resident’s rooms shall be stored in cleanable, rodent-proof, covered containers, pending removal. [Class III]

16.1.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

16.1.2 The administrator shall take immediate steps to correct any condition, in the physical facility or on the premises, which poses a danger to a resident’s life, health and/or safety. [Classes II/III]

16.2 Insect and rodent control. There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. Doors and windows used for ventilation must be screened.

16.3 Food safety and sanitation. Food shall be stored, prepared and served in a safe and sanitary manner. [Class III]

16.3.1 Kitchen and food preparation areas shall be located away from possible food contamination sources. [Class III]

16.3.2 Kitchen and food preparation areas must be clean, and food stored so as to be free from spoilage and contamination. [Class III]

16.3.3 All equipment, dishes, glassware and cooking utensils shall be in good repair. [Class III]

16.3.4 Refrigerator temperature shall not exceed forty-one degrees (41°) Fahrenheit. [Class II]

16.4 Bathrooms. Bathrooms must be safe, sanitary and in good repair.

16.4.1 Adequate indoor bathing and flush toilet facilities for the number of residents in the facility must be provided. For all facilities licensed on or after the effective date of these regulations, a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available.

16.4.2 Bathing facilities shall afford privacy.

16.4.3 If a resident needs grab bars to bathe safely, a bathing facility equipped with grab bars that meet the Americans with Disabilities Act standards will be required.

16.4.4 Facilities shall supply a sanitary means for washing and drying hands in bathrooms.

16.5 Telephone. There must be a listed telephone available to all residents.
16.6 **Heat.** Resident areas of the facility shall be maintained at a temperature of, at least, seventy degrees (70°F) Fahrenheit or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. \[Class III\]

16.7 **Hot water.** Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°F) Fahrenheit. Hot water shall be supplied in adequate quantities. \[Class III\]

16.8 **Exits.** In facilities licensed prior to June 1, 1989, there must be at least two (2) usable exits that are remote from each other. In facilities initially licensed on or after June 1, 1989, there must be at least two (2) usable exit doors that are remote from each other. Exits must be clear of obstructions. \[Class III\]

16.9 **Handrails.** Inside and outside stairs are required to have handrails. Handrails on each side of the stairs may be required to meet the needs of residents. \[Class III\]

16.10 **Private water supply.** A private water supply shall be tested annually and a satisfactory result obtained. The Department will furnish the applicant with forms for water testing which must be submitted to the Division of Health Engineering. No license shall be issued to a facility that does not get its water from a municipal water system until:

16.10.1 A water analysis report has been obtained, indicating that the water supply meets the standards of the Division of Health Engineering, Department of Health and Human Services; or

16.10.2 An alternative source of water that meets those standards will be used until a satisfactory water analysis report is obtained. The alternate water source must be approved in writing by the Department. \[Class III\]

16.11 **Poisonous and toxic materials.** When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. \[Class III\]

16.12 **Animals.** There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly. \[Class III\]

16.13 **Dryer ventilation.** Dryers shall be vented to the exterior of the building. \[Class III\]
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED
June 1, 2006  [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _________________________________
(hereinafter “the Provider”) and you, _________________________________.

This contract describes your financial obligations, as well as other
responsibilities and rights. It also describes the rights and obligations that apply
to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a
customized addendum but these additional provisions may not conflict with or
replace the use of the standard contract. The intent of having a standard contract
in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you
and the Provider agree as follows:

IV. STANDARDS

The Provider will help to further your independence and respect your privacy
and personal choices, including your choice to continue to reside here for as
long as the Provider and program, as it is fundamentally designed, is able to
meet your needs. The Provider’s programs will be consumer oriented and meet
professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services,
the Provider will assist you in making other arrangements including moving
somewhere else, if necessary.

V. PROVIDER LICENSE
The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the ___________. This Provider is licensed as follows (check one):

- Level I Residential Care Facility
- Level II Residential Care Facility
- Level III Residential Care Facility
- Level IV Residential Care Facility
- Level I PNMI Residential Care Facility
- Level II PNMI Residential Care Facility
- Level III PNMI Residential Care Facility
- Level IV PNMI Residential Care Facility
- Type I Assisted Living Program
- Type II Assisted Living Program

This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

VI. APPENDICES

The following Appendices are attached and made a part of this contract:

- Appendix A: Admissions Policy
- Appendix B: Your Rights
- Appendix C: Grievance Policy
- Appendix D: Tenancy Obligations (check if this applies)
Appendix E: Additional terms in Customized Addendum (check if this applies)
Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider
X. **ADMISSION POLICY**

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

XI. **SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE**

A. You agree to purchase:

- [ ] Housing and Services.
- [ ] Housing Only.

B. You agree to pay the following current rate to the Provider:

- [ ] Daily rate of $________
- [ ] Monthly rate of $________
- [ ] The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

- The landlord is________________________________________.
- The amount of your current monthly rent is ___________.

DI. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

16. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
17. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and
18. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:


☐ Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
☐ Staff will accompany you to medical appointments
☐ The Provider provides an escort for regular travel
☐ The Provider has qualified staff in the building 24-hours/day
☐ Other ________________________________
☐ Additional provisions: See Appendix E

11. Assistance with activities of daily living. (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)

☐ Walking
☐ Changing position in bed
☐ Transferring from place to place
☐ Dressing
☐ Eating
☐ Using the bathroom
☐ Bathing
Personal hygiene, such as help washing your hair

Additional Provisions: See Appendix E
12. Incidental activities of daily living.

- Using the telephone
- Handling your finances
- Banking
- Shopping
- Light housekeeping
- Heavy housekeeping
- Getting to appointments
- Barber/beautician services
- Other ____________________________________________

Additional Provisions: See Appendix E


- Obtaining medications from the Pharmacy of your choice: ____________________________________________

- Ordered by Provider
- Delivered by the Pharmacy
- Ordered by you/family member
- Picked up by Provider
- Picked up by you/family member

- Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)

- Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for example, information that they have been administered at the right time and in the right dose
14. Food Service.

- Meal preparation (including the cost of food) _____ times each day
- Meal preparation (food purchased separately by you) ________ times each day
- Nutritious between-meal snacks ________ times each day
- Special diets ordered by your physician as follows:
  ________________
- Shopping for groceries you purchase
- Meal planning
- Other ____________________________

Additional Provisions: See Appendix E

15. Transportation services.

- Arranging transportation (cost of transportation included) _____ miles roundtrip
- Arranging transportation (cost of transportation not included)
- Transportation without escort to medical appointments within ________ miles roundtrip
- Transportation with escort to medical appointments within ________ miles roundtrip
- Other ____________________________

16. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:

- None
- Skilled nursing services provided by a registered professional nurse.
Registered professional nurse who oversees staff and coordinates your health care needs.
17. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

- All housing costs (there will be no extra charges)
- All housing costs except:

- Semi-private room
- Shared bathroom
- Private room
- Private bathroom
- Efficiency apartment
- One Bedroom Apartment
- Two Bedroom Apartment
- Other
- Additional Provisions: See Appendix E
- You have a lease agreement with a landlord other than the Provider: See Appendix F

18. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

- None
- Non-prescription analgesics and antacids
- Bedroom furnishings:

- Pillows, sheets, linens, towels
- Laundry supplies and equipment
Laxatives
Thermometers
Non-prescription skin creams/lubricants
Mouthwash
Toothpaste
Other non-prescription ointments:_______________________
Shampoo
Soap
Facial tissue
Toilet tissue
Paper towels
Incontinence supplies
Other:______________________________________________

10. Additional Services

See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame:______________________________________________.
If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.
B. Source of payment for services covered by the daily/monthly rate:

☐ Self-pay
☐ Self-pay and billing to a third party:_____________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:

☐ Self-pay
☐ Other_____________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.

☐ There is a security deposit. This security deposit will not exceed one month’s rent (currently $____________), and will be refunded to you within thirty (30) days from date of discharge/death.

☐ The following costs may be deducted from the security deposit:

__________________________________________________________

__________________________________________________________

G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.
In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.

In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.
IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.

B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).

C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

- [ ] Manage own affairs
- [ ] Durable Financial Power of Attorney
- [ ] Health Care Power of Attorney
- [ ] Representative Payee
- [ ] Guardian
- [ ] Conservator
- [ ] Trustee
- [ ] Advance Directive/Living will
Other

You agree to supply copies of all relevant information about those individuals who are responsible for your affairs as they relate to your care under this contract.

XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.

XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________________

Your Name

Signature of Provider Representative

Your Signature or
Signature of Your Agent
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APPENDIX F

This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

P. Your Landlord is: ____________________________.

Q. Your current monthly rent is:______________.

R. Among other things, your lease provides that you will receive the following (check all that applies):

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

_____________________________________________________

_____________________________________________________

_____________________________________________________

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other

D. Your lease is attached here for reference.
REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF ASSISTED HOUSING PROGRAMS:

Level II Private Non-Medical Institutions
Part of 10-144 Chapter 113
Effective Date (Last Amended): August 20, 2008
Level II Private Non-Medical Institutes

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Section 1

Purpose

These rules establish minimum standards for the licensing of Level II Private Non-Medical Institutions. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.

These rules governing the licensing and functioning of Assisted Housing Programs – Level II – Private Non-Medical Institutions – shall become effective July 1, 2004.
Section 2

Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by an assisted living program, residential care facility or private non-medical institution.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 “Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I – an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II – an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Nurse; and/or

2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.

2.11 “Assisted Living Services” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:
2.11.1 “Administration of medications” means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;

2.11.2 “Nursing services” means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

2.12 “Certified Nursing Assistant (CNA)” means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.13 “Certified Nursing Assistant/Medications (CNA/M)” means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.14 “Deficiency” means a violation of State licensing regulations.

2.15 “Dementia” means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather of symptoms that accompanies certain diseases and conditions. Such diseases can cause dementia as Alzheimer’s disease, Pick’s disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s disease, Huntington’s disease, Creutzfeldt-Jakob disease, multi-infarct dementia, etc.

2.16 “Department” means the Maine Department of Health and Human Services.

2.17 “Directed Plan of Correction” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 “Distinct Part” means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

2.19 “Duly Authorized Licensed Practitioner” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
2.20 “Emergency” means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 “Independent Housing with Services Program” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

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

2.29 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.
2.30 “Licensee” means the person to whom a license is issued.

2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.40 “Private Non-Medical Institution” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Private non-medical institutions are a type of residential care facility that receives MaineCare funds and complies with additional requirements as specified in various sections of these rules. A PNMI provides housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes, a supported living arrangement certified by the Department of Behavioral and Developmental Services, or a facility licensed as a residential care facility. Following are the types of private non-medical institutions:

2.40.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.40.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.
2.40.3 Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.40.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.41 “Provider” means the licensee.

2.42 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.43 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.44 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.45 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.

2.46 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.47 “Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.

2.48 “Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.49 “Resident Assessment Instrument (RAI)” is the assessment tool approved by the Department for use by the provider to obtain an accurate standardized, reproducible assessment of each resident’s functional capacity. It consists of the Minimum Data Set – Residential Care Assessment instrument (MDS – RCA), the training manual for the MDS-RCA tool, and any updates provided by the Department.

2.50 “Resident Rights” means those rights enumerated in Title 22 M.R.S.A. §7921 et seq. and 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also those enumerated in Section 5 of these regulations.

2.51 “Residential Care Facility” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:
2.51.1 Level I – a facility with a licensed capacity of one (1) to two (2) residents.

2.51.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.51.3 Level III – a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.51.4 Level IV – a facility with a licensed capacity of more than six (6) residents.

2.52 “Residential Services Plan” means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.53 “Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.53.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.53.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

2.54 “Scattered Sites” means facilities with licensed private non-medical institution beds at scattered locations serving a minimum of four eligible members, as long as the service provided consistently fits within the definition of the applicable appendices in accordance with Chapter III, Section 97, of the MaineCare Benefits Manual.

2.55 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person obtaining the medication for the individual.

2.56 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.57 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department, which describes deficiencies in complying with these regulations.

2.58 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department.
2.59 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.60 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.61 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 Responsibility for compliance. The applicant/licensee shall comply with these regulations.

3.2 Unlicensed Level II private non-medical institution (PNMI). No person, firm, partnership, association, corporation or other entity shall manage or operate a Level II private non-medical institution without a license.

3.3 Person license issued to. The license is only valid for the named licensee(s).

3.4 Application and licensure.

3.4.1 Application required. The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Private non-medical institutes - $10.00 each licensed bed.

3.4.2 Admission and scope of services policy. Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.

3.4.3 Additional licensing requirements. Prior to the issuance of a license and prior to re-licensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A residential care facility or private non-medical institution with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated thereunder, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);

3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing;
3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq. and

3.4.3.5 Provide evidence that all taxes applicable to PNMI are current and up-to-date.

3.5 **Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 **Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 **Issuance of license.** A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license. Any provider who is issued a license for scattered sites will have all the sites listed on the single license.

3.8 **Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

3.9 **Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program, residential care facility or private non-medical institution; and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.
The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 Adult day services programs. When an adult day services program is physically located in an assisted living program, residential care facility or private non-medical institution, separate licenses shall not be required. The adult day services programs shall comply with the Regulations Governing the Licensing and Functioning of Adult Day Services Programs and licensed capacity will be reflected on the license.

3.11 Multilevel facility license. For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities; adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 Provisional license. The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.

3.13 Conditional license. The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.
3.14 **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program, residential care facility or private non-medical institution is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the Department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the Department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post a copy of the license at each of its licensed locations, where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level II PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for a Level II private non-medical institution license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.
3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

3.20.1 Issuance of a conditional license;
3.20.2 Refusal to issue or renew a license;
3.20.3 Revocation or suspension of a license; or
3.20.4 Refusal to issue a provisional license.

3.21 **Renewal.** A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;
3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 **Actions requiring prior written approval.** When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 **Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 **Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the department. See also Section 4.10 of these regulations.

3.25 **Rates and contracts.**

3.25.1 **Rates.** Assisted housing programs shall list all standard charges and make them available to the public.
3.25.2 **Signing a contract.** Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.

3.25.3 **Provisions of contract.** The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar day’s notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision, which provides for the payment of attorney fees or any other cost of collecting payments from the resident.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;

3.25.3.6.2 Tenancy obligations, if they exist;

3.25.3.6.3 Resident rights; and

3.25.3.6.4 Copy of the admissions policy.
3.25.3.7 The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of facility and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;

3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6 The program’s staff qualifications.
3.27 **Information for residents of Alzheimer’s/dementia units.** When a provider operates a unit meeting the requirements of a Designated Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

3.27.5 A description of family involvement and the availability of family support programs;

3.27.6 A description of security measures provided by the facility;

3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

3.28 **Refunds.** Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.

3.29 **Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items, which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. *(Class IV)*
3.30 **Tenancy obligation.** Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

3.31 **Administrative and resident records.**

3.31.1 **Confidentiality.** All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 **Location of records.** All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 **Inspection of records.** All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 **Record retention.** All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.

3.31.5 **Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 **Disaster plan.** Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

- **3.31.6.1** Contingencies for loss of power, heat, lights, water and/or sewage disposal;

- **3.31.6.2** Contingencies for short term and long term emergencies; and

- **3.31.6.3** If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 **Confidential information.** Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 Inspections required. The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. [Class I]

4.2 Frequency and type of inspections. An inspection may occur:

4.2.1 Prior to the issuance of a license;
4.2.2 Prior to renewal of a license;
4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;
4.2.4 When there has been a change or proposed change in administrator, physical plant or services;
4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;
4.2.6 For routine monitoring of resident care; or
4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 Licensing records kept by the department. The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 Complaints. The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.

4.5 Enforcement process.

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.

4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.
4.5.3 Failure to correct any deficiency(ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.

4.5.4 **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program or Private Non-Medical Institute without a license;

4.6.2 Operation of an assisted living program or Private Non-Medical Institute over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3;

4.6.7 Failure to comply with 22 M.R.S.A. §7904- A (10) regarding time drills, as further described in Section 14.3.
4.7 Intermediate sanctions. The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

4.7.1 The assisted living program, residential care facility or private non-medical institution may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.

4.8 Financial penalties.

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must
notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.

4.8.5 The amount of any penalty to be imposed shall be calculated according to the following classification system:

4.8.5.1 Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; $6.00 per resident per occurrence per day

Operation of an assisted living program or residential care facility over licensed capacity, or

Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.

4.8.5.2 Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; $5.00 per resident per occurrence per day

Failure to submit a POC within ten (10) working day’s after receipt of an SOD; or

Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.

4.8.5.3 The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3; $4.00 per resident per occurrence per day

The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.

4.8.6 The department may impose a penalty upon a licensee of a Level II PNMI for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level II PNMI.

4.8.7 Failure to comply with 22 M.R.S.A. §7904 (6) regarding time drills, as further described in Section 13.3, commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.
4.8.8.1 In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.

4.8.8.2 In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.

4.8.8.3 The department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program, residential care facility or private non-medical institution.

4.9.2 If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

4.9.3 Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program, residential care facility or private non-medical institution. The department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184, subsection 6.

4.9.4 Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program, residential care facility or private non-medical institution or conducts or practices detrimental to the welfare of persons living in or attending the facility/program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375 §10051.
4.9.5 Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition the Superior Court to appoint a receiver to operate the assisted living program, residential care facility or private non-medical institution.

4.9.5.1 When the assisted living program, residential care facility or private non-medical institution intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;

4.9.5.2 When an emergency exists which threatens the health, security or welfare of residents; or

4.9.5.3 When the assisted living program, residential care facility or private non-medical institution is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.

4.10 Appeal rights. Any assisted living program, residential care facility or private non-medical institution aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of Licensing and Regulatory Services, Community Services Programs, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.1 Issue a conditional license;
4.10.2 Amend or modify a license;
4.10.3 Void a conditional license;
4.10.4 Refuse to issue or renew a full license;
4.10.5 Refuse to issue a provisional license;
4.10.6 Stop or limit admissions;
4.10.7 Issue a directed POC;
4.10.8 Affirm or modify an Assessment of Penalties after an informal review;
4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or
4.10.10 Deny a request for a waiver of a rule.
4.11 Surveillance and Utilization Review: The provider will cooperate with the department’s Surveillance and Utilization Review (SUR) Unit and/or the department’s authorized designee who carries out a program of safeguarding against unnecessary or inappropriate utilization of, and excess payments for, care and services available under MaineCare and assessing the quality.

4.12 Operating without a license

4.12.1 License required. A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level II PNMI.

4.12.2 Civil penalty for operating without a license. A person, firm, partnership, association, corporation or other entity who operates a Level II PNMI without a license commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

4.12.3 Injunctive relief. Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.12.

4.12.4 Enforcement. The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.12.

4.12.5 Jurisdiction. The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.12.

4.12.6 Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.12 occurred.

4.12.7 Right of entry. To inspect the premises of a Level II PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.12.8 Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level II PNMI with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.12. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.12.9 Noninterference. An owner or person in charge of an unlicensed Level II PNMI may not interfere with or prohibit the interviewing by the department of residents or consumers of services.
4.12.10 Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.12 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.12.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.12, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

4.12.10.2 In an action under section 4.12, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

5 RESIDENT RIGHTS

5.1 Resident rights. The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices. [Class IV]

5.2 Freedom of choice of provider. For services and supplies not provided by the licensee each resident has the right to select the provider of his/her choice. [Class IV]

5.3 Rights regarding transfer and discharge. Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution; [Class IV]

5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others; [Class IV]

5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there; [Class IV]

5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident; [Class IV]

5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; [Class IV] or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered. [Class IV]

5.4 Transfer or discharge. When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. [Class IV] Each notice must be written and include the following:

5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; [Class IV]

5.4.2 The effective date of the transfer or discharge; [Class IV]
5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services BDS)); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of assisted living programs, residential care facilities or private non-medical institutes shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations list advocacy services which may be available to the resident. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. [Class IV]
5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the resident can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 Right to manage financial affairs. Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 Right to freedom from abuse, neglect or exploitation. Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 Rights regarding restraints and aversive conditioning. There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]

5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation and the Regulations Governing the Use of Restraints in Community Settings. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as the Department Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.11.3 For any resident who is a client of the Department of Behavioral and Development Services due to his/her mental illness, the facility/program shall comply with the Rights of Recipients of Mental Health Services, promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Development Services (BDS)). [Class I, II, III, IV]
5.12 **Right to confidentiality.** Residents’ records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other person except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from the facility except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, children, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 **Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility. [Class IV]

5.14 **Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]

5.15 **Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 **Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 **Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 **Couples.** A couple residing in an assisted housing program has the right to share a room. [Class IV]
5.19 **Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services, which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 **Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident. [Class IV]

5.21 **Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 **Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to, Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]

5.23 **Notification of Resident Rights.** The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the change. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. [Class IV]

5.24 **Bill of rights for persons with mental retardation.** Facilities/programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

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

Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. §19501 through §19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. §5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. §1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. §3470 through §3487.
Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

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

5.26 **Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to reside in an assisted living program, residential care facility or private non-medical institution, the provider shall:

5.26.1 Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]

5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 **Right of action.** In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 **Right to appeal an involuntary transfer or discharge.** The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the facility unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director, Licensing and Certification, Community Services Programs, for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. [Class IV]
5.29 **Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations.  *[Class IV]*

5.30 **Resident councils**

5.30.1 Residents of assisted living programs, residential care facilities or private non-medical institutions have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:

5.30.3.1 To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved;  *[Class IV]*

5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights;  *[Class IV]*

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement;  *[Class IV]*

5.30.3.4 To help identify residents' problems and recommend ways to ensure early resolution;  *[Class IV]*

5.30.3.5 To inform the administrator of the opinions and concerns of the residents;  *[Class IV]*

5.30.3.6 To find ways of involving the families and residents of the facility;

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and  *[Class IV]*

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request.  *[Class IV]*

5.31 **Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies.  *[Class IV]*
Section 6

Alzheimers’/Dementia and Other Specialty Unit Standards

6.1 Alzheimers’/Dementia Care Units. A facility or unit designated as an Alzheimers’/Dementia Care Unit shall comply with the following regulations and the facility must have received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimers’/Dementia unit, the resident’s individual record must contain:

6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician’s diagnosis of Alzheimers’ disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimers’/dementia care unit shall have;

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways, which allow residents to ambulate, but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;

6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and
6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 Physical environment. The designated Alzheimers'/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimers'/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.
6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimer’s/Dementia Care Units. All facilities with Alzheimer’s/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.4.3 Social activities (e.g., games, music, reminiscing, etc.);

6.4.4 Crafts (e.g., decorations, pictures, etc.);

6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.4.7 Spiritual activities.

6.5 Pre-service training for Alzheimer’s/Dementia Care Units. For pre-service training, all facilities with Alzheimer’s/Dementia Care Units must provide a minimum of eight (8) hours of classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer’s disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer’s Disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer’s Disease and related dementias;

6.5.2 Communication basics;

6.5.3 Creating a therapeutic environment;

6.5.4 Activity focused care;

6.5.5 Dealing with difficult behaviors; and

6.5.6 Family issues.
6.6 Specialty Units other than Alzheimers’/Dementia

6.6.1 Design standards. The unit shall be designed to accommodate residents who will be admitted to the unit.

6.6.2 Program standards: Program standards shall be in accordance with accepted industry standards.

6.7 Therapeutic activities. All facilities with specialty care units shall offer the following types of individual or group activities in accordance with the assessed needs of the residents:

6.7.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.7.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.7.3 Social activities (e.g., games, music, reminiscing, etc.);

6.7.4 Crafts (e.g., decorations, pictures, etc.);

6.7.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.7.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.7.7 Spiritual activities.

6.8 Pre-service training for Specialty Care Units. For pre-service training, all facilities must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals specific to that specialty. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to care, the eight (8) hours of classroom orientation shall include the following topics:

6.8.1 A general overview of the related specialty;

6.8.2 Communication basics;

6.8.3 Creating a therapeutic environment;

6.8.4 Activity focused care;

6.8.5 Dealing with difficult medical issues and/or behaviors; and

6.8.6 Family issues
Section 7

Medications and Treatments

7.1 Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [Classes I/II/III]

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [Classes I/II/III]

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4 If a resident has Diabetes, unlicensed persons must be trained by a registered professional nurse in regard to the management of persons with diabetics. The registered professional nurse must provide in-service training and documentation to include: Documentation of training shall be included in the employee record. [Class III]

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation including signs/symptoms;

7.1.4.6 Treatment and prevention of insulin reaction;

7.1.4.7 Foot care;

7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and
7.1.4.9 Standard Precautions.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.2 Self-administration of medications. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner, and a facility representative.

7.3 Medication storage. Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. [Class III]

7.4 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments, and/or use of medical equipment not specifically outlined in these Regulations, there must documentation in the Employee file.

7.5 Whenever employees are in serviced or taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
Section 8

Verification of Credentials

8.1 Licensed Staff. Prior to employing licensed staff, the facility must verify that the licensed person has a valid and current license.

8.2 Employing CNA’s and CNA-M’s. Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.

8.3 Prohibited Employment. The facility may not hire as unlicensed assistive personnel as defined in section 2.58 an individual who is prohibited from employment as a certified nursing assistant as outlined below:

8.3.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.3.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.3.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.3.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry or Certified Nursing Assistants.

8.4 Time Limit on Consideration of Prior Criminal Conviction: Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

8.4.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;
8.4.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.5 **Exception:** The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812-G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.

8.6 **Notification:** A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Scope of Licenses

9.1 **Licensing of facilities with three (3) to six (6) residents.** A license is required for more than two residents. A Level II license may be issued to a Private Non-Medical Institute with 3-6 beds if the provider has fewer than three (3) employees who are not owners nor related to the owner, as long as the requirements of these rules are met.

9.2 **Exemptions for licensed children’s homes.** The Department may exempt a licensed children’s home from requiring a Level II license once a resident reaches the age of eighteen (18) if the resident has not completed his/her prescribed program of treatment, care or education, or discharge from the facility will occur within nine (9) months of the date the resident turned eighteen (18). If the facility’s purpose is to treat or care for children, and the above requirements are met, the Department may grant a written exemption from licensure in order for the adult resident’s income to be supplemented.

9.3 **Dual licensure.** No facility shall be granted a Level II license, and any previously granted Level II license may be subject to revocation, if another license or approval is in effect or granted, unless the Department has determined that dual licensure will not have an adverse impact on the residents.

9.4 **Maximum number of adult residents.** The maximum number of beds for which a facility may be licensed will be determined by the Department, according to the regulations set forth herein. Respite care may only be provided in licensed beds.

9.5 **Physical plant changes.** No alterations in the size or arrangement of the physical plant, location or number of resident rooms or beds, change in the heating system, water supply system, sewage disposal system, utilities or similar systems shall be made without the prior written approval of the Department in accordance with these regulations.

9.6 **Residents under the age of 18.** A person who is seventeen (17) years of age may be a resident of a Level II facility without the home being required to be licensed as a children’s home, if the Department determines in writing prior to placement that such a placement is in the best interest of that person. The general physical and mental health of all residents of the facility shall be considered in this decision.
Section 10

Provider and Staff Qualifications and Responsibilities

10.1 Provider's age. The provider shall be at least twenty-one (21) years of age. [Class III]

10.2 Education, experience and training. The provider shall submit satisfactory evidence regarding education, experience and training to meet the needs of the residents to be served.

10.3 Qualifications of the provider. The provider must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. In making this determination, the Department may consider:

10.3.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the provider.

10.3.2 Understanding of and compliance with resident rights.

10.3.3 Any information reasonably related to the ability to provide safe and compassionate services.

10.4 Operating cash flow. Upon initial application, the provider shall give evidence of income or cash flow to meet the expenses of the facility for at least the first two (2) months. This may include such evidence as a line of credit or liquid assets.

10.5 Responsibilities. The provider is responsible for the overall operation of the facility and shall:

10.5.1 Ensure that staff are qualified, adequately trained and competent and are performing their duties consistent with all regulations and provisions of law;

10.5.2 Make work assignments according to the qualifications of staff and the number and needs of the residents; and

10.5.3 Assure that each resident’s abilities and needs are adequately assessed and that each resident is offered all necessary services.

10.5.4 For all facilities initially licensed on or after the effective date of these regulations, provide office space, adequate in size and providing privacy to complete and store required records.

10.5.5 If time studies are required, the Administrator shall be responsible to see they are done in compliance with paragraph 97.07-8 of Chapter II, Section 97, of the MaineCare Benefits Manual.
10.6 Qualifications of other staff. Other caregivers must meet the following standards:

10.6.1 Any person who is given supervisory responsibility over residents must be a capable and dependable person at least eighteen (18) years of age, who is not a resident. Such a person, or the provider, will be available whenever a resident is in the facility. A record of the name, address and telephone number of persons who provide supervision in the absence of the provider shall be kept on file in the facility and shall be made available to the Department upon request. This person will be instructed regarding evacuation procedures for the facility. [Level I, II, III, IV]

10.6.2 Residential care staff shall attend and show evidence of successful completion of any training that the Department determines to be necessary.

10.6.3 No provider shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease that would threaten the health and welfare of the residents, unless Standard Precautions reduce or eliminate exposure or risk to the residents. [Class I, II, III, IV]

10.7 Consultation services.

10.7.1 Pharmacist consultant services. The Department reserves the right to require pharmacist consultation in the event that serious or multiple deficiencies in medication administration are noted.

10.7.2 Registered nurse consultant services. The Department reserves the right to require licensed nurse consultation in the event that serious or multiple deficiencies in the health care of residents are noted.

10.7.3 Consultant dietitian services. The Department reserves the right to require a qualified consultant dietitian in the event that serious or multiple deficiencies in food service are noted.
Section 11

Health Care and Access to Services

11.1 Medical and health care. The provider shall coordinate appropriate health care services and assist residents to access them. Each resident shall have access to a duly authorized licensed practitioner of his/her choice. Each resident shall have an annual physical, unless otherwise specified by his/her duly authorized licensed practitioner. [Class II]

11.2 Transportation. The facility shall provide or arrange transportation to medical and other appointments.

11.3 First aid kit. A first aid kit containing supplies for treatment of minor injuries, such as cuts, scrapes or first-degree burns, shall be available in the facility. All staff shall be instructed in the use of any item in the kit.

11.4 Nursing services. Nursing services are to be provided by professional nurses pursuant to Title 32 M.R.S.A. §2102, subsection 2. This includes coordination and oversight of assisted living services by unlicensed assistive personnel.

11.5 Resident Assessment/Re-assessment. The facility shall use the Resident Assessment Instrument (RAI), or other assessment instrument as may be required by the agency providing the MaineCare funding.
Section 12

Management of Resident Personal Accounts

12.1  **Written permission.** The licensee or his/her representative may only manage personal accounts for a resident if requested to do so, in writing, by the resident or the resident’s legal representative.

12.2  **Documentation.** The provider must maintain and document an accounting of the funds, with supporting documentation for each expenditure that exceeds $2.00.

Under no circumstances shall the personal funds of any resident, beyond what the provider receives for monthly payments, be used for the operating costs of the facility or the personal expenses of the provider or his/her representative.

12.3  **Commingling.** Residents’ personal funds shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility.
Section 13

Resident and Other Records

13.1 Summary sheets. There shall be a summary sheet maintained for each resident that includes applicable information, including the resident’s name, birth date, date of admission, duly authorized licensed practitioner's name, address and telephone number, nearest relative or friend’s name, address and telephone number, person to be notified in an emergency, their name, address and telephone number, day program name, telephone number, address and contact person, date of discharge or death and significant medical/social issues.

13.2 Resident records. There shall be a record maintained for each resident that contains applicable information on physical and mental condition, behavior, mood, eating habits, incidents or accidents, documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, and the dates of medical examinations, other medical and dental treatment and drugs prescribed.

13.3 Discharge summary. Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall include, but not be limited to the following:

   13.3.1 Reason for discharge; and
   13.3.2 Targeted living arrangement.

13.4 Record of personal property. The provider shall maintain a list of each resident’s property including items of personal value.

13.5 Employee records for a corporation, partnership, association or an entity other than an individual. For any provider that is a corporation, partnership, association or an entity other than an individual, the Department may request that reasonable personnel policies and records be kept documenting that employees have been trained and are competent and performing their duties consistent with these regulations.
Section 14

Safety Standards

14.1 Fire safety plans. Each facility must have a fire safety plan. The fire safety plan and any changes in the plan are to be developed in conjunction with and approved by, local or state fire authorities. [Class III]

14.2 Elements of a fire safety plan. In addition to any requirements of local or state fire authorities, the plan shall note steps to be taken, location of emergency exits, evacuation procedures and the telephone numbers of police, fire, ambulance and duly authorized licensed practitioners or other individuals to contact in an emergency. The fire safety plan shall be posted conspicuously in the facility.

14.4 Drills or rehearsals.

14.3.1 Timed drills, as described in the applicable chapters of the NFPA Life Safety Code, must be used in facilities with 3 or more beds to determine a facility’s capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the NFPA Life Safety Code 101A. When a new resident has participated in a timed drill in another Private Non-Medical Institute within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident’s current facility for a period of up to 4 months. [Class II]

14.3.2 Facilities with 3 or more beds shall conduct drills or rehearsals of the emergency steps to be taken at irregular times of the day, at least 6 (six) times per year spaced throughout the year. Two of the six drills must be conducted while residents are asleep. [Class II]

14.4 Record of drills or rehearsals. A record shall be kept on a form provided by the Department showing the date and time of each drill. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. [Class II]

14.5 Free-standing, solid fuel burning stoves. Freestanding, solid fuel burning stoves (including wood and coal) are permitted in living areas, but not in bedrooms. They must be installed within NFPA No. 211 guidelines or as regulated by the Solid Fuel Board of Maine. Guidelines contained in NFPA No. 211 may be obtained by contacting the Office of the State Fire Marshal. [Class III]

14.6 Portable electric heaters. Portable closed liquid electric heaters may be used if approved by the Office of the State Fire Marshal. No radiant or quartz heaters shall be used. [Class III]

14.7 Extension cords. Extension cords are prohibited, except for those cords that have a fuse mechanism. [Class III]

14.8 Smoke detectors. Smoke detectors shall be functional at all times. [Class I]
Section 15

Nutrition and Health

15.1 Quality and quantity of food. The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

15.2 Resident participation in meal planning and preparation. Residents shall be encouraged to participate in food planning and preparation, as appropriate.

15.3 Second-grade products. Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods shall not be used. (Class III)

15.4 Food supplies. Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.

15.5 Residents with communicable diseases. No resident with a communicable disease shall be admitted if that resident's condition or behavior endangers the health and welfare of other residents and no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.
Section 16

Living Area and Sleeping Accommodations

16.1 Living and dining areas. Residents shall be provided an area for dining and relaxation sufficient in size to accommodate the provider’s family and the residents. Comfortable, non-folding chairs must be provided. The rooms shall be well lighted and free of hazards. A television set for use by the residents shall be available.

16.2 Bedrooms.

16.2.1 For facilities initially licensed on or after May 29, 1998, a minimum of one hundred (100) square feet of usable floor space shall be provided in a single bedroom. A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.2 For all facilities initially licensed before May 29, 1998, a minimum of eighty (80) square feet of usable floor space shall be provided in a single bedroom. A minimum of seventy (70) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.3 Usable floor space shall be calculated only for that floor space having a ceiling height of a minimum of six (6) feet, except as provided in Section 16.2.4. Corridors, passageways, vestibules, alcoves, closets and wardrobe space shall be excluded from the calculations of usable floor space.

16.2.4 Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) may be counted toward usable floor space for the room.

16.2.6 There shall be no more than two (2) people in each room. Couples who are both residents of the facility have the right to share a room.

16.2.6 Each resident bedroom shall have a solid door that can be closed for privacy.

16.2.7 Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum required floor space per Sections 16.2.1 and 16.2.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. In air-conditioned buildings, at least one window in each room must be able to be opened.
16.2.8 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident bedroom. No resident room shall be used for access to other rooms or corridors. [Class III]

16.2.9 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing.

16.2.10 Each resident shall be offered a bed and mattress that is at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds do not meet this requirement.

16.2.11 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected.

16.2.12 For each bed there shall be offered:

   16.2.12.1 At least two (2) dresser drawers;
   16.2.12.2 A comfortable non-folding chair in good repair;
   16.2.12.3 A bedside table; and
   16.2.12.4 A reading lamp.

16.2.13 The facility shall permit and encourage residents to use their own furnishings, space permitting.

16.2.14 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair.

16.2.15 There must be a direct source of heat to each bedroom.

16.2.16 There shall be an adequate towel, linen and bedding supply in addition to those in use, so that a complete linen change is available in the facility at all times.

16.2.17 Residents shall not share bedrooms with members of the provider’s family who are not receiving assisted living services, unless the facility obtains written permission from the Department. Permission will be granted if the arrangement is in the resident’s best interest and is acceptable to the resident or the resident’s guardian or conservator.

16.3 Renting space. The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.
Section 17

Sanitation and Safety

17.1 Maintenance. The facility must be kept clean and shall be maintained in a condition ensuring the health and safety of residents. All refuse collected in common areas or from resident’s rooms shall be stored in cleanable, rodent-proof, covered containers, pending removal. [Class III]

17.1.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

17.1.2 The administrator shall take immediate steps to correct any condition, in the physical facility or on the premises, which poses a danger to a resident’s life, health and/or safety. [Classes II/III]

17.2 Insect and rodent control. There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. Doors and windows used for ventilation must be screened.

17.3 Food safety and sanitation. Food shall be stored, prepared and served in a safe and sanitary manner. [Class III]

17.3.1 Kitchen and food preparation areas shall be located away from possible food contamination sources. [Class III]

17.3.2 Kitchen and food preparation areas must be clean, and food stored so as to be free from spoilage and contamination. [Class III]

17.3.3 All equipment, dishes, glassware and cooking utensils shall be in good repair. [Class III]

17.3.4 Refrigerator temperature shall not exceed forty-one degrees (41°) Fahrenheit. [Class II]

17.4 Bathrooms. Bathrooms must be safe, sanitary and in good repair.

17.4.1 Adequate indoor bathing and flush toilet facilities for the number of residents in the facility must be provided. For all facilities licensed on or after the effective date of these regulations, a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available.

17.4.2 Bathing facilities shall afford privacy.
17.4.3 If a resident needs grab bars to bathe safely, a bathing facility equipped with grab bars that meet the Americans with Disabilities Act standards will be required.

17.4.4 Facilities shall supply a sanitary means for washing and drying hands in bathrooms.

17.5 Telephone. There must be a listed telephone available to all residents.

17.6 Heat. Resident areas of the facility shall be maintained at a temperature of, at least, seventy degrees (70°) Fahrenheit or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. [Class III]

17.7 Hot water. Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. [Class III]

17.8 Exits. In facilities licensed prior to June 1, 1989, there must be at least two (2) usable exits that are remote from each other. In facilities initially licensed on or after June 1, 1989, there must be at least two (2) usable exit doors that are remote from each other. Exits must be clear of obstructions. [Class III]

17.9 Handrails. Inside and outside stairs are required to have handrails. Handrails on each side of the stairs may be required to meet the needs of residents. [Class III]

17.10 Private water supply. A private water supply shall be tested annually and a satisfactory result obtained. The Department will furnish the applicant with forms for water testing which must be submitted to the Division of Health Engineering. No license shall be issued to a facility that does not get its water from a municipal water system until:

17.10.1 A water analysis report has been obtained, indicating that the water supply meets the standards of the Division of Health Engineering, Department of Health and Human Services; or

17.10.2 An alternative source of water that meets those standards will be used until a satisfactory water analysis report is obtained. The alternate water source must be approved in writing by the Department. [Class III]

17.11 Poisonous and toxic materials. When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. [Class III]
17.12 **Animals.** There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly.  *[Class III]*

17.13 **Dryer ventilation.** Dryers shall be vented to the exterior of the building.  *[Class III]*
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED
June 1, 2006 [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _________________________________ (hereinafter “the Provider”) and you, _________________________________. This contract describes your financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a customized addendum but these additional provisions may not conflict with or replace the use of the standard contract. The intent of having a standard contract in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you and the Provider agree as follows:

VII. STANDARDS

The Provider will help to further your independence and respect your privacy and personal choices, including your choice to continue to reside here for as long as the Provider and program, as it is fundamentally designed, is able to meet your needs. The Provider’s programs will be consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services, the Provider will assist you in making other arrangements including moving somewhere else, if necessary.

VIII. PROVIDER LICENSE
The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the __________. This Provider is licensed as follows (check one):

- Level I Residential Care Facility
- Level II Residential Care Facility
- Level III Residential Care Facility
- Level IV Residential Care Facility
- Level I PNMI Residential Care Facility
- Level II PNMI Residential Care Facility
- Level III PNMI Residential Care Facility
- Level IV PNMI Residential Care Facility
- Type I Assisted Living Program
- Type II Assisted Living Program

☐ This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

IX. APPENDICES

The following Appendices are attached and made a part of this contract:

- Appendix A: Admissions Policy
- Appendix B: Your Rights
- Appendix C: Grievance Policy
☐ Appendix D: Tenancy Obligations (check if this applies)
☐ Appendix E: Additional terms in Customized Addendum (check if this applies)
☐ Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider
XII. ADMISSION POLICY

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

XIII. SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE

A. You agree to purchase:

[ ] Housing and Services.
[ ] Housing Only.

B. You agree to pay the following current rate to the Provider:

[ ] Daily rate of $________
[ ] Monthly rate of $________
[ ] The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

The landlord is ________________________________.

The amount of your current monthly rent is ________.

DII. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

19. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
20. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and

21. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:

19. Personal Supervision.

☐ Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
☐ Staff will accompany you to medical appointments
☐ The Provider provides an escort for regular travel
☐ The Provider has qualified staff in the building 24-hours/day
☐ Other _______________________________________________________

☐ Additional provisions: See Appendix E

20. Assistance with activities of daily living. (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)

☐ Walking
☐ Changing position in bed
☐ Transferring from place to place
☐ Dressing
☐ Eating
☐ Using the bathroom
Bathing

Personal hygiene, such as help washing your hair

Other

Additional Provisions: See Appendix E

- Using the telephone
- Handling your finances
- Banking
- Shopping
- Light housekeeping
- Heavy housekeeping
- Getting to appointments
- Barber/beautician services
- Other ____________________________________________

Additional Provisions: See Appendix E

22. Medication assistance.

- Obtaining medications from the Pharmacy of your choice:
  ________________________________________________

  - Ordered by Provider
  - Delivered by the Pharmacy
  - Ordered by you/family member
  - Picked up by Provider
  - Picked up by you/family member

- Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)

- Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for example, information that they have been administered at the right time and in the right dose
23. Food Service.

- Meal preparation (including the cost of food) _____ times each day
- Meal preparation (food purchased separately by you) _____ times each day
- Nutritious between-meal snacks _________ times each day
- Special diets ordered by your physician as follows:

- Shopping for groceries you purchase
- Meal planning
- Other ________________________________

Additional Provisions: See Appendix E

24. Transportation services.

- Arranging transportation (cost of transportation included) _______ miles roundtrip
- Arranging transportation (cost of transportation not included)
- Transportation without escort to medical appointments within ________ miles roundtrip
- Transportation with escort to medical appointments within ________ miles roundtrip
- Other ________________________________

Additional Provisions: See Appendix E

25. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:

- None
Skilled nursing services provided by a registered professional nurse.

Registered professional nurse who oversees staff and coordinates your health care needs.
26. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other
☐ Additional Provisions: See Appendix E
☐ You have a lease agreement with a landlord other than the Provider: See Appendix F

27. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

☐ None
☐ Non-prescription analgesics and antacids
☐ Bedroom furnishings:

☐ Pillows, sheets, linens, towels
10. Additional Services

☐ See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

☐ See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame: ____________________________.

If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge.
from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.

B. Source of payment for services covered by the daily/monthly rate:
   - Self-pay
   - Self-pay and billing to a third party:__________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:
   - Self-pay
   - Other________________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.
   - There is a security deposit. This security deposit will not exceed one month’s rent (currently $__________), and will be refunded to you within thirty (30) days from date of discharge/death.
   - The following costs may be deducted from the security deposit:
      ____________________________________________
      ____________________________________________
      ____________________________________________

   - Security deposits are part of your separate lease with the Landlord.
G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.

☐ In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.

☐ In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.
IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.
B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).
C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

☐ Manage own affairs
☐ Durable Financial Power of Attorney
☐ Health Care Power of Attorney
☐ Representative Payee
☐ Guardian
☐ Conservator
☐ Trustee
XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.

XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ______________________

Your Name
<table>
<thead>
<tr>
<th>Signature of Provider Representative</th>
<th>Your Signature or Signature of Your Agent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Provider</td>
<td>Address</td>
</tr>
<tr>
<td>Address</td>
<td>Telephone Number</td>
</tr>
</tbody>
</table>
APPENDIX F

This Appendix applies only if you rent your unit from an entity (the "Landlord") that is not the Provider.

S. Your Landlord is: ____________________________.

T. Your current monthly rent is:____________________.

U. Among other things, your lease provides that you will receive the following (check all that applies):

- All housing costs (there will be no extra charges)
- All housing costs except:

  ______________________________________________________

  ______________________________________________________

  ______________________________________________________

  ______________________________________________________

- Semi-private room
- Shared bathroom
- Private room
- Private bathroom
- Efficiency apartment
- One Bedroom Apartment
- Two Bedroom Apartment
- Other

D. Your lease is attached here for reference.
REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF ASSISTED HOUSING PROGRAMS:

Level III Private Non-Medical Institutions
Part of 10-144 Chapter 113
Effective Date (Last Amended): August 20, 2008

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF LICENSING AND REGULATORY SERVICES
State House Station 11
41 Anthony Ave.
Augusta, ME 04333-0011
(207) 287-9300
1-800-791-4080
TDD 1-800-606-0215
dlrs.info@maine.gov
Level III Private Non Medical Institutions

Section 1 Purpose.

Section 2 Definitions

Section 3 Licensing

Responsibility for compliance .................................................................1
Unlicensed facilities ......................................................................................1
Person license issued to ...............................................................................1
Application and licensure ..............................................................................1
Application required .....................................................................................1
Admission and scope of services policy ......................................................1
Additional licensing requirements ...............................................................1
Requirement for bond ...................................................................................2
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Section 1

Purpose

These rules establish minimum standards for the licensing of Level III Private Non-Medical Institutions. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.

These rules governing the licensing and functioning of Assisted Housing Programs – Level III – Private Non-Medical Institutions – shall become effective July 1, 2004.
Section 2

Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility or a private non-medical institution.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 “Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I - an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II - an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Professional Nurse; and/or

2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.

2.11 “Assisted Living Services” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:
“Administration of medications” means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;

“Nursing services” means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

“Certified Nursing Assistant (CNA)” means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

“Certified Nursing Assistant/Medications (CNA/M)” means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

“Deficiency” means a violation of State licensing regulations.

“Dementia” means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

“Department” means the Maine Department of Health and Human Services.

“Directed Plan of Correction” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

“Distinct Part” means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

“Duly Authorized Licensed Practitioner” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
2.20 “Emergency” means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 “Exploitation” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 “Failure to Make Timely Correction of Any Deficiency” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 “False Information” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 “Food Preparation Area” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.

2.25 “Functional Assessment” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 “Impede or Interfere with the Enforcement of Regulations” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 “Independent Housing with Services Program” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

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

2.29 “Legal Representative” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.

2.30 “Licensee” means the person to whom a license is issued.
2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.40 “Private Non-Medical Institution” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Private non-medical institutions are a type of residential care facility that receives MaineCare funds and complies with additional requirements as specified in various sections of these rules. A PNMI provides housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes, a supported living arrangement certified by the Department of Behavioral and Developmental Services, or a facility licensed as a residential care facility. Following are the types of private non-medical institutions:

2.40.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.40.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.
2.40.3 Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.40.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.41 “Provider” means the licensee.

2.42 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.43 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.44 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.45 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.

2.46 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.47 “Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.

2.48 “Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.49 “Resident Assessment Instrument (RAI)” is the assessment tool approved by the Department for use by the provider to obtain an accurate standardized, reproducible assessment of each resident’s functional capacity. It consists of the Minimum Data Set – Residential Care Assessment instrument (MDS – RCA), the training manual for the MDS-RCA tool, and any updates provided by the Department.

2.50 “Resident Rights” means those rights enumerated in Title 22 M.R.S.A. §7921 et seq. and 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also they’re enumerated in Section 5 of these regulations.

2.51 “Residential Care Facility” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:
2.51.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.51.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.51.3 Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.51.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.52 “Residential Services Plan” means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.53 “Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.53.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.53.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

2.54 “Scattered Sites” means facilities with licensed private non-medical institution beds at scattered locations serving a minimum of four eligible members, as long as the service provided consistently fits within the definition of the applicable appendices in accordance with Chapter III, Section 97, of the MaineCare Benefits Manual.

2.55 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person obtaining the medication for the individual.

2.56 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.57 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department which describes deficiencies in complying with these regulations.

2.58 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department.
2.59 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.60 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.61 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 **Responsibility for compliance.** The applicant/licensee shall comply with these regulations.

3.2 **Unlicensed Level III private non-medical institution (PNMI).** No person, firm, partnership, association, corporation or other entity shall manage or operate a Level III private non-medical institution without a license.

3.3 **Person license issued to.** The license is only valid for the named licensee(s).

3.4 **Application and licensure.**

3.4.1 **Application required.** The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Residential Care Facilities - $10.00 each licensed bed.

3.4.2 **Admission and scope of services policy.** Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.

3.4.3 **Additional licensing requirements.** Prior to the issuance of a license and prior to relicensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A residential care facility or private non-medical institution with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated there under, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);

3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing;
3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq. and

3.4.3.5 Provide evidence that all taxes applicable to PNMIIs are current and up-to-date.

3.5 **Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 **Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 **Issuance of license.** A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license. Any provider who is issued a license for scattered sites will have all the sites listed on the single license.

3.8 **Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

3.9 **Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program, residential care facility or private non-medical institution and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.
The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 **Adult day services programs.** When an adult day services program is physically located in an assisted living program, residential care facility or private non-medical institution separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the license.

3.11 **Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities, adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 **Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.

3.13 **Conditional license.** The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.
3.14 **Transfer of licenses.** No license may be transferred and is not applicable to any location or persons other than those specified on the license. When an assisted living program, residential care facility or private non-medical institution is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post a copy of the license at each of its licensed locations, where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level III PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for a Level III private non-medical institution license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.
3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

3.20.1 Issuance of a conditional license;

3.20.2 Refusal to issue or renew a license;

3.20.3 Revocation or suspension of a license; or

3.20.4 Refusal to issue a provisional license.

3.21 **Renewal.** A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;

3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 **Actions requiring prior written approval.** When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 **Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 **Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of notice or receipt of the date of the informal review decision by writing to the department. See also Section 4.10 of these regulations.
3.25 Rates and contracts.

3.25.1 Rates. Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions as long as they are consistent with the applicable assisted housing program rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar day’s notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision, which provides for the payment of attorney fees or any other cost of collecting payments from the resident.
3.25.3.6  The following shall be appended to the contract and made a part thereof:

3.25.3.6.1  Grievance procedure;

3.25.3.6.2  Tenancy obligations;

3.25.3.6.3  Resident rights; and

3.25.3.6.4  Copy of the admissions policy.

3.25.3.7  The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1  Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2  You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3  You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26  Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1  Advance Directives information;

3.26.2  Information regarding the type of facility and the licensing status;

3.26.3  The Maine Long Term Care Ombudsman Program brochure;

3.26.4  The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs;

3.26.5  The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6  The program’s staff qualifications.
3.27 Information for residents of Alzheimer’s/dementia units. When a provider operates a unit meeting the requirements of a Designated, or Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

3.27.5 A description of family involvement and the availability of family support programs;

3.27.6 A description of security measures provided by the facility;

3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

3.28 Refunds. Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.
3.29 **Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items, which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. *(Class IV)*

3.30 **Tenancy obligation.** Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

3.31 **Administrative and resident records.**

3.31.1 **Confidentiality.** All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 **Location of records.** All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 **Inspection of records.** All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 **Record retention.** All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.

3.31.5 **Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 **Disaster plan.** Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 **Confidential information.** Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 Inspections required. The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. [Class I]

4.2 Frequency and type of inspections. An inspection may occur:

4.2.1 Prior to the issuance of a license;

4.2.2 Prior to renewal of a license;

4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;

4.2.4 When there has been a change or proposed change in administrator, physical plant or services;

4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;

4.2.6 For routine monitoring of resident care; or

4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 Licensing records kept by the department. The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 Complaints. The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.

4.5 Enforcement process.

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.

4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.
4.5.3 Failure to correct any deficiency(ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.

4.5.4 **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program or residential care facility without a license;

4.6.2 Operation of an assisted living program or residential care facility over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.

4.7 **Intermediate sanctions.** The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

4.7.1 The assisted living program, residential care facility or private non-medical institution may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.
4.7.3 The department may impose a financial penalty.

4.8 Financial penalties.

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.
4.8.5  The amount of any penalty to be imposed shall be calculated according to the following classification system:

4.8.5.1  Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; $6.00 per resident
    Operation of an assisted living program or residential care facility over licensed capacity, or occurrence per day
    Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.

4.8.5.2  Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; $5.00 per resident
    Failure to submit a POC within ten (10) working days occurrence per day after receipt of an SOD; or
    Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.

4.8.5.3  The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3; $4.00 per resident occurrence per day
    The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.

4.8.6  The department may impose a penalty upon a licensee of a Level III PNMI for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level III PNMI.

4.8.7  Failure to comply with 22 M.R.S.A. §7904-A (6) regarding time drills, as further described in Section 13.3 commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8  Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

4.8.8.1  In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.
4.8.8.2 In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.

4.8.8.3 The department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program, residential care facility or private non-medical institution.

4.9.2 If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

4.9.3 Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program, residential care facility or private non-medical institution, the department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184, subsection 6.

4.9.4 Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living, residential care facility or private non-medical institution conduct or practices detrimental to the welfare of persons living in or attending the facility/program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5 M.R.S.A. Chapter 375 §10051.

4.9.5 Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition the Superior Court to appoint a receiver to operate the assisted living program, residential care facility or private non-medical institution in the following circumstances:

4.9.5.1 When the assisted living program, residential care facility or private non-medical institution intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;
4.9.5.2 When an emergency exists which threatens the health, security or welfare of residents; or

4.9.5.3 When the assisted living program, residential care facility or private non-medical institution is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.

4.10 Appeal rights. Any assisted living program, residential care facility or private non-medical institution aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of Licensing and Regulatory Services, Community Services Programs, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.2 Issue a conditional license;
4.10.2 Amend or modify a license;
4.10.3 Void a conditional license;
4.10.4 Refuse to issue or renew a full license;
4.10.5 Refuse to issue a provisional license;
4.10.6 Stop or limit admissions;
4.10.7 Issue a directed POC;
4.10.8 Affirm or modify an Assessment of Penalties after an informal review;
4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or
4.10.10 Deny a request for a waiver of a rule.
4.11 **Surveillance and Utilization Review:** The provider will cooperate with the department’s Surveillance and Utilization Review (SUR) Unit and/or the department’s authorized designee who carries out a program of safeguarding against unnecessary or inappropriate utilization of, and excess payments for, care and services available under MaineCare and assessing the quality.

4.12 **Operating without a license**

4.12.1 **License required.** A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level III PNMI.

4.12.2 **Civil penalty for operating without a license.** A person, firm, partnership, association, corporation or other entity who operates a Level III PNMI without a license commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

4.12.3 **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.12.

4.12.4 **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.12.

4.12.5 **Jurisdiction.** The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.12.

4.12.6 **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.12 occurred.

4.12.7 **Right of entry.** To inspect the premises of a Level III PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.12.8 **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level III PNMI with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.12. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department’s right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.12.9 **Noninterference.** An owner or person in charge of an unlicensed Level III PNMI may not interfere with or prohibit the interviewing by the department of residents or consumers of services.
4.12.10 Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.12 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.

4.12.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.12, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

4.12.10.2 In an action under section 4.12, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

Resident Rights

5.1 **Resident rights.** The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices. [Class IV]

5.2 **Freedom of choice of provider.** For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice. [Class IV]

5.3 **Rights regarding transfer and discharge.** Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution; [Class IV]

5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others; [Class IV]

5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there; [Class IV]

5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident; [Class IV]

5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; [Class IV] or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered. [Class IV]

5.4 **Transfer or discharge.** When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. [Class IV] Each notice must be written and include the following:

5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; [Class IV]
5.4.2 The effective date of the transfer or discharge; [Class IV]

5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services BDS); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of assisted living programs, residential care facilities or private non-medical institutions shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations list advocacy services which may be available to residents. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. [Class IV]
5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the resident can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 **Right to manage financial affairs.** Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 **Right to freedom from abuse, neglect or exploitation.** Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 **Rights regarding restraints and aversive conditioning.** There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]

5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the *Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation* and the *Regulations Governing the Use of Restraints in Community Settings*. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.11.3 For any resident who is a client of the Department of Health and Human Services (formerly known as the Department of Behavioral and Development Services (BDS)) due to his/her mental illness, the facility/program shall comply with the *Rights of Recipients of Mental Health Services*, promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Development Services (BDS)). [Class I, II, III, IV]
5.12 **Right to confidentiality.** Residents’ records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other persons except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals, groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 **Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility. [Class IV]

5.14 **Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]

5.15 **Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 **Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 **Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 **Couples.** A couple residing in an assisted housing program has the right to share a room. [Class IV]
5.19 **Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services, which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 **Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident. [Class IV]

5.21 **Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 **Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to decisions to issue Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]

5.23 **Notification of Residents Rights.** The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative, within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the changes. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. [Class IV]

5.24 **Bill of rights for persons with mental retardation.** Facilities/programs serving persons with mental retardation shall post and comply with the Bill of Rights for Persons with Mental Retardation, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

5.25 **Mandatory report of rights violations.** Any person or professional who provides health care, social services or mental health services or who administers a long term care facility or program who has reasonable cause to suspect that the regulations pertaining to residents’ rights or the conduct of resident care have been violated, shall immediately report the alleged violation to the Department of Health and Human Services (1-(800) 383-2441) and to one or more of the following:

- Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. §19501 through §19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. §5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. §1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. §3470 through §3487.
Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

Mandated reporters shall contact the Department of Health and Human Services (1-(800) 383-2441) immediately after receiving and/or obtaining information about any rights violations. [Class IV]

5.26 Reasonable modifications and accommodations. To afford individuals with disabilities the opportunity to reside in an assisted living program, residential care facility or private non-medical institution, the licensee shall:

5.26.1 Permit directly, or through agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]

5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 Right of action. In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 Right to appeal an involuntary transfer or discharge. The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director, Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. [Class IV]
5.29 **Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations. [Class IV]

5.30 **Resident councils**

5.30.1 Residents of assisted living programs, residential care facilities or private non-medical institutions have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:

5.30.3.1 To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved; [Class IV]

5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights; [Class IV]

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement; [Class IV]

5.30.3.4 To help identify residents' problems and recommend ways to ensure early resolution; [Class IV]

5.30.3.5 To inform the administrator of the opinions and concerns of the residents; [Class IV]

5.30.3.6 To find ways of involving the families and residents of the facility;

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and [Class IV]

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. [Class IV]

5.31 **Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies. [Class IV]
Section 6

Alzheimer’s/Dementia and Other Specialty Unit Standards

6.1 Alzheimer’s/Dementia Care Units. A facility or unit designated as an Alzheimer’s/Dementia Care Unit shall comply with the following regulations and the facility must have received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer’s/Dementia unit, the resident’s individual record must contain:

6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician’s diagnosis of Alzheimer’s disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimer’s/dementia care unit shall have:

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways, which allow residents to ambulate, but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;

6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and
6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 Physical environment. The designated Alzheimers'/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimers’/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.
6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimer's/Dementia Care Units. All facilities with Alzheimer's/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);
6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);
6.4.3 Social activities (e.g., games, music, reminiscing, etc.);
6.4.4 Crafts (e.g., decorations, pictures, etc.);
6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);
6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and
6.4.7 Spiritual activities.

6.5 Pre-service training for Alzheimer's/Dementia Care Units. For pre-service training, all facilities with Alzheimer's/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer's disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer's disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer's Disease and related dementias;
6.5.2 Communication basics;
6.5.3 Creating a therapeutic environment;
6.5.4 Activity focused care;
6.5.5 Dealing with difficult behaviors; and
6.5.6 Family issues.
6.6 Specialty Units other than Alzheimer’s/Dementia

6.6.1 Design standards. The unit shall be designed to accommodate residents who will be admitted to the unit.

6.6.2 Program standards: Program standards shall be in accordance with accepted industry standards.

6.7 Therapeutic activities. All facilities with specialty care units shall offer the following types of individual or group activities in accordance with the assessed needs of the residents:

6.7.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.7.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.7.3 Social activities (e.g., games, music, reminiscing, etc.);

6.7.4 Crafts (e.g., decorations, pictures, etc.);

6.7.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.7.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.7.7 Spiritual activities.

6.8 Pre-service training for Specialty Care Units. For pre-service training, all facilities must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals specific to that specialty. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to care, the eight (8) hours of classroom orientation shall include the following topics:

6.8.1 A general overview of the related specialty;

6.8.2 Communication basics;

6.8.3 Creating a therapeutic environment;

6.8.4 Activity focused care;

6.8.5 Dealing with difficult medical issues and/or behaviors; and

6.8.6 Family issues.
Section 7

Medications and Treatments

7.1  Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [Classes I/II/III]

7.1.1  Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [Classes I/II/III]

7.1.2  No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3  Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4  Unlicensed assistive personnel must be trained by a registered professional nurse in regard to the management of persons with diabetes. The registered professional nurse must provide in-service training and documentation to include: [Class III]

7.1.4.1  Dietary requirements;

7.1.4.2  Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3  Insulin mixing including insulin action;

7.1.4.4  Insulin storage;

7.1.4.5  Injection techniques and site rotation;

7.1.4.6  Treatment and prevention of insulin reaction including signs/symptoms;

7.1.4.7  Foot care;

7.1.4.8  Lab testing, urine testing and blood glucose monitoring; and

7.1.4.9  Standard Precautions.

Documentation of training shall be included in the employee record.
Review of this training shall be on an annual basis.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.1.6 For those residents whom the facility is responsible for assistance with medication administration, no medications, including those brought into the facility by the resident, family or friends, shall be administered or discontinued without a written order signed by a duly authorized licensed practitioner or other person licensed to prescribe medications. [Class III]

7.1.7 Orders for medications and treatments shall be in writing, signed and dated by a duly authorized licensed practitioner and shall be in effect for the time specified by the duly authorized licensed practitioner, but in no case to exceed twelve (12) months, unless there is a written reorder. Orders for psychotropic medications shall be reissued every three (3) months, unless otherwise indicated by the duly authorized licensed practitioner. Standing orders for individual residents are acceptable when signed and dated by the duly authorized licensed practitioner.

7.1.7.1 Upon admission to another facility, all existing orders are no longer in effect. Upon return to the facility, all orders must be reviewed and approved by the resident’s duly authorized licensed practitioner within 72 hours. During that timeframe, orders that are signed and dated by the discharging duly authorized licensed practitioner are the current acceptable orders. Prior to admission to another facility all medications must be removed from service and placed in a locked area in accordance with Section 7.7.

7.5 Administration of medications.

7.2.1 Self-administration. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner and a facility representative.

7.2.2 Medications administered by facility. For those medications and/or associated treatments for which the facility is responsible, the following apply:

7.2.2.1 Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Written dated orders for telephone orders must be signed by the duly authorized licensed practitioner within five (5) working days. [Class III]
7.2.2.2 Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy regulations.

7.2.3 Unlicensed Health Care Assistive Personnel. Unlicensed assistive personnel administering medications and/or treatments must successfully complete training approved by the Department. There shall be evidence available in the facility that such training has been successfully completed. Whenever the standards or guidelines of the medication administration course are substantially revised, unlicensed personnel must be re-certified within one (1) year of the revision, by a method approved by the Department. An additional exception will be made on a case-by-case basis for persons who only administer dietary supplements and/or minor medicated treatments, shampoos, lotions and creams that could be obtained over the counter without a physician’s order. Any person who is certified as a CNA-M may administer medications and/or treatments.

A person qualified to administer medications must be on site at the facility whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

All unlicensed assistive personnel administering medications and/or treatments must complete a Department-approved eight (8) hour refresher course biennially for re-certification within two (2) years of the original certification. [Class III]

7.2.4 PRN Medications.

7.2.4.1 PRN Psychotropic medications. Psychotropic medications ordered "as needed" by the duly authorized licensed practitioner, shall not be administered unless the duly authorized licensed practitioner has provided detailed behavior-specific written instructions, including symptoms that might require use of medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a twenty-four (24) hour period. Facility staff shall notify the duly authorized licensed practitioner within twenty-four (24) hours when such a medication has been administered, unless otherwise instructed in writing by the duly authorized licensed practitioner.

7.2.4.2 A person qualified to administer medications must be on site at the assisted living program, residential care facility or private non-medical institution whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

In no event, however, shall antipsychotic-type psychotropic medications be prescribed on a PRN basis only, having no routinely scheduled and administered doses.
7.3 Medication storage.

7.3.1 Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. [Class III]

7.3.2 Medications administered by the assisted living program, residential care facility or private non-medical institution shall be kept in their original containers in a locked storage cabinet. The cabinet shall or private non-medical institution be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each resident's medications. It shall be locked when not in use and the key carried by the person on duty in charge of medication administration. [Class III]

7.3.3 Medications/treatments administered by the assisted living program, residential care facility or private non-medical institution for external use only shall be kept separate from any medications to be taken internally. [Class III]

7.3.4 Medications administered by the assisted living program, residential care facility or private non-medical institution which require refrigeration, shall be kept safely stored and separate from food by placement in a special tray or container, except vaccines, which must be stored in a separate refrigeration unit that is not used to store food. Refrigeration shall be forty-one (41) degrees Fahrenheit or below. A thermometer shall be used to ensure proper refrigeration. [Class III]

7.4 Temporary absences. When a temporary absence from the facility is expected to be greater than seventy-two (72) hours, medications leaving the facility (except those for resident’s who self-administer) must be in a form packaged and labeled by a pharmacist. For medications leaving the facility for seventy-two (72) hours or less, the medication shall be packaged in such a way as to facilitate self-administration or administration by a responsible party of the correct medication at the appropriate time. Properly certified or licensed staff will use acceptable methods and procedures for preparing medications for leaving the facility. Staff will follow the same policies used in the facility for administering medications. The name of the resident and the name and strength of each drug, as well as the directions from the original prescription package, should be conveyed to the resident or their responsible party along with all cautionary information in writing, either directly on an envelope containing the appropriate dose or on a separate instruction sheet. If the medication is sent in original container, pills must be counted and documented upon leaving and returning to the facility. [Class III]

7.5 Medication labeling. Each prescription dispensed by a pharmacy shall be clearly labeled in compliance with requirements of the Commission on Pharmacy and shall include at least the following:

7.5.1 Prescription number;

7.5.2 Resident's full name;
7.5.3 Name, strength and dosage of the drug;
7.5.4 Directions for use;
7.5.5 Name of prescribing duly authorized licensed practitioner;
7.5.6 Name and address of issuing pharmacy;
7.5.7 Date of issue of latest refill;
7.5.8 Expiration date; and
7.5.9 Appropriate accessory and cautionary instructions.

7.6 Improperly labeled medications. For medications administered by the assisted living program, residential care facility or private non-medical institution, all pharmaceutical containers having soiled, damaged, incomplete, incorrect, illegible or makeshift labels shall be returned to the original dispensing pharmacy for relabeling within two (2) working days or shall be disposed of in accordance with the requirements contained in Section 7.9. [Class III]

7.7 Expired and discontinued medications. For all medications administered by the assisted living program, residential care facility or private non-medical institution medications shall be removed from use and properly destroyed after the expiration date and when discontinued, according to procedures contained in Section 7.9. They shall be taken out of service and locked separately from other medications until reordered or destroyed. [III]

7.8 Medication owned by residents. Prescribed medicines are the property of the resident and shall not be given to or taken by other residents or any other person.

7.9 Destroying medications. For medications administered by the assisted living program, residential care facility or private non-medical institution, all discontinued medications, expired medications or medications prescribed for a deceased resident, except controlled substances and individual doses, shall be destroyed by the administrator or the administrator’s designee and witnessed by one (1) competent person who is not a resident. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the pharmacist and a credit or rebate made to the person(s) who originally paid for the medication. Amounts destroyed or returned shall be recorded on the resident's record, with the signature of the administrator or the administrator’s designee and witness(es). Destruction or return to the pharmacy shall take place within sixty (60) calendar days of expiration or discontinuation of a medication or following the death of the resident.

7.10 Schedule II controlled substances. All Schedule II controlled substances administered by the residential care facility listed in the Comprehensive Drug Abuse Act of 1970, Public Law 91-513, Section 202 and as amended pursuant to Section 202 are subject to the following standards. [Class II]
7.10.1 For all Schedule II controlled substances, there shall be an individual record in which shall be recorded the name of the resident, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand.  

7.10.2 There shall be a recorded and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the facility that day.  

7.10.3 All Schedule II controlled substances on hand shall be counted at least weekly and records kept of the inventory in a bound book with numbered pages, from which no pages shall be removed.  

7.10.4 All Schedule II controlled substances shall be stored under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall.  

7.10.5 All excess and undesired Schedule II controlled substances in the possession of a licensed facility that are no longer required for a resident, shall be disposed of in the following manner.  The Administrator or a licensed or registered nurse shall list all such unused substances and keep the same in a securely locked area apart from all other drugs.  Disposal shall be in the form of incineration or flushing into the sewage system only in the presence of an authorized representative of the Department, a licensed pharmacist, a member of the Commission on Pharmacy or an authorized representative of the Drug Enforcement Agency.  At least one (1) of the persons must be a person who did not dispense the drug or who was the last person to inventory the drug.  Documentation of such destruction shall be made on the resident's record and in the inventory record required in Section 7.10.3, signed by the individual authorized to dispose of the drug.  

7.11 **Bulk supplies.** Facilities may stock in bulk supply those items regularly available without prescription at a pharmacy.  

7.12 **Medication/treatment administration records (MAR) for medications administered by the assisted living program, residential care facility or private non-medical institution.**  

7.12.1 Individual medication/treatment administration records shall be maintained for each resident and shall include all treatments and medications ordered by the duly authorized licensed practitioner.  The name of the medication, dosage, route and time to be given shall be recorded in the medication/treatment administration record.  Documentation of treatments ordered and time to be done shall be maintained in the same manner.  These rules apply only to treatments ordered by licensed health care professionals.  

7.12.2 Whenever a medication or treatment is started, given, refused or discontinued, including those ordered to be administered as needed (PRN), the medication or treatment shall be documented on the medication/treatment administration record.  It shall be initialed by the administering individual, with the full signature of the individual written on the first page of each month’s MAR.  A medication or treatment shall not be discontinued without evidence of a stop order signed and dated by the duly authorized licensed practitioner.
7.12.3 Medication errors and reactions shall be recorded in an incident report in the resident's record. Medication errors include errors of omission, as well as errors of commission. Errors in documentation or charting are errors of omission. [Class II]

7.12.4 Administration of medications ordered as needed (PRN) shall be documented and shall include date, time given, medication and dosage, route, reason given, results or response and initials or signature of administering individual. Treatments ordered PRN shall be documented in the same manner.

7.13 Medication containers. Graduated medicine containers, for the accurate measurement of liquid medications, shall be used. If not disposable, medicine containers shall be returned to the facility's dishwashing unit for sanitization after each use. Only sterile disposable syringes and needles shall be used for insulin injection. Disposable medicine containers shall not be reused. [Class III]

7.14 Breathing apparatus. When the facility assists a resident with a hand-held bronchodilator, metered dose nebulizers, intermittent positive pressure breathing machine or oxygen machine, there shall be documentation of the following:

7.14.1 The names of staff who are qualified or trained to use the equipment and/or to mix medications, the nature of their training, the date and who provided it;

7.14.2 The name of the distributing agency and the frequency and specific directions for cleaning the equipment; and

7.14.3 The resident's record shall contain a copy of the duly authorized licensed practitioner’s order, possible side effects to be monitored, specific instructions as to when the duly authorized licensed practitioner must be notified regarding side effects and instructions to the resident on the use of the breathing apparatus.

7.15 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or use of medical equipment not specifically outlined in these regulations, there must be documentation in the employee file.

7.16 Whenever employees are provided in service training or taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
Section 8

Verification of Credentials

8.1 Licensed Staff. Prior to employing licensed staff, the facility must verify that the person has a valid and current license.

8.2 Employing CNA’s and CNA-M’s. Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or if the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.

8.3 Prohibited Employment. The facility may not hire as unlicensed assistive personnel as defined in section 2.58 an individual who is prohibited from employment as a certified nursing assistant as outlined below: and in section 8.4

8.3.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.3.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.3.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.3.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants.

8.4 Time Limit on Consideration of Prior Criminal Conviction: Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

8.4.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;
8.4.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.5 Exception: The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812-G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.

8.6 Notification: A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Scope of Licenses

9.1 Licensing of facilities with three (3) to six (6) residents. A license is required for more than two residents. A Level III license is required for a residential care facility with 3-6 beds if the provider has three (3) or more employees who are not owners nor related to the owner and if the requirements of these rules are met.

9.2 Exemptions for licensed children’s homes. The Department may exempt a licensed children’s home from requiring a Level III license once a resident reaches the age of eighteen (18) if the resident has not completed his/her prescribed program of treatment, care or education, or discharge from the facility will occur within nine (9) months of the date the resident turned eighteen (18). If the facility’s purpose is to treat or care for children, and the above requirements are met, the Department may grant a written exemption from licensure in order for the adult resident’s income to be supplemented.

9.3 Dual licensure. No facility shall be granted a Level III license, and any previously granted Level III license may be subject to revocation, if another license or approval is in effect or granted, unless the Department has determined that dual licensure will not have an adverse impact on the residents.

9.4 Maximum number of adult residents. The maximum number of beds for which a facility may be licensed will be determined by the Department, according to the regulations set forth herein. Respite care may only be provided in licensed beds.

9.5 Physical plant changes. No alterations in the size or arrangement of the physical plant, location of resident rooms, change in the heating system, water supply system, sewage disposal system, utilities or similar systems shall be made without the prior written approval of the Department in accordance with these regulations.

9.6 Residents under the age of 18. A person who is seventeen (17) years of age may be a resident of a Level III facility without the home being required to be licensed as a children’s home, if the Department determines in writing prior to placement that such a placement is in the best interest of that person. The general physical and mental health of all residents of the facility shall be considered in this decision.
Section 10

Provider and Staff Qualifications and Responsibilities

10.1 Provider’s age. The provider shall be at least twenty-one (21) years of age. [Class III]

10.2 Education, experience and training. The provider shall submit satisfactory evidence regarding education, experience and training to meet the needs of the residents to be served.

10.3 Qualifications of the provider. The provider must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. In making this determination, the Department may consider:

10.3.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the provider.

10.3.2 Understanding of and compliance with resident rights.

10.3.2 Any information reasonably related to the ability to provide safe and compassionate services.

10.4 Operating cash flow. Upon initial application, the provider shall give evidence of income or cash flow to meet the expenses of the facility for at least the first two (2) months. This may include such evidence as a line of credit or liquid assets.

10.5 Provider responsibilities. The provider is responsible for the overall operation of the facility and shall:

10.5.1 Ensure that staff are qualified, adequately trained and competent and are performing their duties consistent with all regulations and provisions of law;

10.5.2 Make work assignments according to the qualifications of staff and the number and needs of the residents; and

10.5.3 Assure that each resident’s abilities and needs are adequately assessed and that each resident is offered all necessary services.

10.5.4 If time studies are required, the Administrator shall be responsible to see they are done in compliance with paragraph 97.07-8 of Chapter II, Section 97, of the MaineCare Benefits Manual.
10.6 Qualifications of other staff. Other caregivers must meet the following standards:

10.6.1 Any person who is given supervisory responsibility over residents must be a capable and dependable person at least eighteen (18) years of age, who is not a resident. Such a person, or the provider, will be available whenever a resident is in the facility. A record of the name, address and telephone number of persons who provide supervision in the absence of the provider shall be kept on file in the facility and shall be made available to the Department upon request. This person will be instructed regarding evacuation procedures for the facility. [Class I, II, III, IV]

10.6.2 Residential care staff shall attend and show evidence of successful completion of any training that the Department determines to be necessary.

10.6.3 No provider shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease that would threaten the health and welfare of the residents, unless Standard Precautions reduce or eliminate exposure or risk to the residents. [Class I, II, III, IV]

10.7 Staffing levels. Staffing shall be sufficient to implement service plans and provide a safe setting. Whenever the Department determines that supervision and services are not adequate to meet resident needs, additional staffing may be required at the discretion of the Department. Additionally, staffing may be permitted to be shared with other levels of assisted housing programs on the same premises as long as there is a clear, documented audit trail and the staffing in the Level III remains adequate to meet the needs of the residents. Staffing to be shared may be based upon the average number of hours used per week or month.

10.8 Nursing services. Nursing services are to be provided by professional nurses pursuant to Title 32 M.R.S.A. §2102, subsection 2. This includes coordination and oversight of assisted living services by unlicensed assistive personnel.

10.9 Consultation services.

10.9.1 Pharmacist consultant services. The Department reserves the right to require pharmacist consultation in the event that serious or multiple deficiencies in medication administration are noted.

10.9.2 Registered nurse consultant services. The Department reserves the right to require licensed nurse consultation in the event that serious or multiple deficiencies in the health care of residents are noted.

10.9.3 Consultant dietitian services. The Department reserves the right to require a qualified consultant dietitian in the event that serious or multiple deficiencies in food service are noted.
Section 11

Health Care and Access to Services

11.1 Medical and Health care. The provider shall coordinate appropriate health care services and assist residents to access them. Each resident shall have access to a duly authorized licensed practitioner of his/her choice. Each resident shall have an annual physical, unless otherwise specified by his/her duly authorized licensed practitioner. [Class II]

11.2 Requirements for the assessment of individual needs, development and implementation of individual service plans and regular progress notes.

11.2.1 Assessments. Each resident shall be assessed within thirty (30) calendar days of admission. Reassessments must be completed annually or more frequently if there is a significant change in his/her condition. The assessments/reassessments are to determine each resident’s abilities and need for services. Residents shall have an opportunity to receive individualized services that help them function in the facility and in the community and that help restore them to an optimal state of health, or for constructive activity, as needed. The facility will assure, to a practicable extent, that residents’ needs will be accommodated regarding individual choices and preferences. This shall be evidenced in the assessment, in the development and implementation of individual service plans and in regular progress notes. The areas identified below are to be assessed. The resident and resident's guardian or other legal representative, as well as staff or other persons approved by the resident or resident’s guardian who are knowledgeable about the resident, shall participate in or be consulted concerning the assessment. The listing of these areas is not meant to exclude assessment of any other obvious needs that residents may exhibit. The facility shall use the state approved resident assessment instrument (RAI) or other assessment or assessment process as required by the agency providing the MaineCare funds to determine their abilities and need for services. The most current assessment shall be kept in the resident’s record. Previous assessments shall be kept with the residents active record.

11.2.1.1 Ability and need regarding psychological services, as indicated by the ability to adjust to the facility, ability to make a social and emotional transition to the facility, such as communicating/relating with others, behaving appropriately, acting compatibly with other residents or adapting/controlling personal habits;

11.2.1.2 Ability and need to maintain or develop family and community ties;

11.2.1.3 Need for educational, religious or community vocational services;

11.2.1.4 Ability and need for assistance with legal or financial problems;

11.2.1.5 Ability and need for assistance with personal care, or ADLs;
11.2.1.6 Ability to manage own personal affairs, use a telephone, handle own finances, read/write correspondence, express likes/dislikes, register to vote;

11.2.1.7 Ability and need regarding social, recreational and leisure time activities, specifying likes and dislikes;

11.2.1.8 Abilities and needs regarding hearing, vision, speech, communication, mobility and memory impairments and use of related adaptive equipment;

11.2.1.9 Ability and need for assistance with securing necessary health care, including medical, nursing, dental, day treatment, psychological or mental health services, qualified sign language interpreters and other communication assistance;

11.2.1.10 Ability and need for arranging transportation to meet medical, social and business needs;

11.2.1.11 Ability and need for assistance to be independent in the community;

11.2.1.12 Ability and need for assistance regarding administration of medications; and

11.2.1.13 Need for discharge planning.

11.2.2 Service plan. A service plan shall be developed and implemented within thirty (30) calendar days of admission for each resident based upon the findings of the assessment. The plan shall address those areas in which the resident needs encouragement, assistance or an intervention strategy. The resident, his/her legal representative (if applicable) and others chosen by the resident shall be actively involved in the development of the service plan, unless he/she is unable or unwilling to participate. There shall be documentation in the resident’s record identifying who participated in the development of the service plan. The plan shall describe strategies and approaches to meet the resident’s needs, names of who will arrange and/or deliver services, when and how often services will be provided and goals to improve or maintain the resident’s level of functioning. Residents shall be encouraged to be as independent as possible in their functioning, including ADLs and normal household tasks if they choose, unless contraindicated by the resident's duly authorized licensed practitioner. The service plan shall be modified, as necessary, based upon identified changes. Residents shall never be required to perform activities specified in the residential service plan or any other activities and cannot be used to replace paid staff.
11.2.3 **Progress notes.** The facility shall maintain ongoing signed and dated progress notes at least monthly, on implementation of the service plan and for any significant changes in the resident’s life including any increases or declines in the resident’s physical and mental functioning that should be considered at the time of reassessment or adjustment in the service plan. Progress notes shall begin within twenty-four (24) hours of admission and shall include an initial summary of basic care needs, circumstances of resident’s placement and resident’s adjustment to the facility.

11.3 **Transportation.** The facility shall provide or arrange transportation to medical and other appointments.

11.4 **First aid kit.** A first aid kit containing supplies for treatment of minor injuries, such as cuts, scrapes or first-degree burns, shall be available in the facility. All staff shall be instructed in the use of any item in the kit.

11.5 **Resident Assessment/Re-assessment.** The facility shall use the Resident Assessment Instrument (RAI) if required by the agency providing the MaineCare funding.
Section 12

Management of Resident Personal Accounts

12.1 Written permission. The licensee or his/her representative may only manage personal accounts for a resident if requested to do so, in writing, by the resident or the resident’s legal representative.

12.2 Documentation. The provider must maintain and document an accounting of the funds, with supporting documentation for each expenditure that exceeds $2.00.

Under no circumstances shall the personal funds of any resident, beyond what the provider receives for monthly payments, be used for the operating costs of the facility or the personal expenses of the provider or his/her representative.

12.3 Commingling. Residents’ personal funds shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility.
Section 13

Resident and Other Records

13.1 Summary sheets. There shall be a summary sheet maintained for each resident that includes applicable information, including the resident’s name, birth date, date of admission, duly authorized licensed practitioner’s name, address and telephone number, nearest relative or friend’s name, address and telephone number, person to be notified in an emergency, their name, address and telephone number, day program name, telephone number, address and contact person, date of discharge or death and significant medical/social issues.

13.2 Resident records. There shall be a record maintained for each resident that contains applicable information on physical and mental condition, behavior, mood, eating habits, incidents or accidents, documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, and the dates of medical examinations, other medical and dental treatment and drugs prescribed.

13.3 Discharge summary. Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall include, but not be limited to the following:

13.3.1 Reason for discharge; and

13.3.2 Targeted living arrangement.

13.4 Record of personal property. The provider shall maintain a list of each resident’s property including items of personal value.

13.5 Employee records for a corporation, partnership, association or an entity other than an individual. For any provider that is a corporation, partnership, association or an entity other than an individual, the Department may request that reasonable personnel policies and records be kept documenting that employees have been trained and are competent and performing their duties consistent with these regulations.
Section 14

Safety Standards

14.1 Fire safety plans. Each facility must have a fire safety plan. The fire safety plan and any changes in the plan are to be developed in conjunction with and approved by, local or state fire authorities. [Class III]

14.2 Elements of a fire safety plan. The plan shall note steps to be taken, location of emergency exits, evacuation procedures and the telephone numbers of police, fire, ambulance and duly authorized licensed practitioners or other individuals to contact in an emergency. The fire safety plan shall be posted conspicuously in the facility.

14.3 Drills or rehearsals.

14.3.1 Timed drills, as described in the applicable chapters of the NFPA Life Safety Code, must be used in facilities with 3 or more beds to determine a facility’s capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the NFPA Life Safety Code 101A. When a new resident has participated in a timed drill in another residential care facility within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident’s current facility for a period of up to 4 months. [Class II]

14.3.2 Facilities with 3 or more beds shall conduct drills or rehearsals of the emergency steps to be taken at irregular times of the day, at least 6 times per year spaced throughout the year. Two of the six drills must be conducted while residents are asleep. [Class II]

14.4 Record of drills or rehearsals. A record shall be kept on a form provided by the Department showing the date and time of each drill. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. [Class II]

14.5 Free-standing, solid fuel burning stoves. Freestanding, solid fuel burning stoves (including wood and coal) are permitted in living areas, but not in bedrooms. They must be installed within NFPA No. 211 guidelines or as regulated by the Solid Fuel Board of Maine. Guidelines contained in NFPA No. 211 may be obtained by contacting the Office of the State Fire Marshal. [Class III]

14.6 Portable electric heaters. Portable closed liquid electric heaters may be used if approved by the Office of the State Fire Marshal. No radiant or quartz heaters shall be used. [Class III]

14.7 Extension cords. Extension cords are prohibited, except for those cords that have a fuse mechanism. [Class III]

14.8 Smoke Detectors. Smoke detectors shall be functional at all times. [Class I]
Section 15

Nutrition and Health

15.1 Quality and quantity of food. The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

15.2 Resident participation in meal planning and preparation. Residents shall be encouraged to participate in food planning and preparation, as appropriate.

15.3 Second-grade products. Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods shall not be used. (Class III)

15.4 Food supplies. Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.

15.5 Residents with communicable diseases. No resident with a communicable disease shall be admitted if that resident’s condition or behavior endangers the health and welfare of other residents and no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.
Section 16

Living Area and Sleeping Accommodations

16.1 Living and dining areas. Residents shall be provided an area for dining and relaxation sufficient in size to accommodate the provider’s family/staff and the residents. Comfortable, non-folding chairs must be provided. The rooms shall be well lighted and free of hazards. A television set for use by the residents shall be available.

16.2 Bedrooms.

16.2.1 For facilities initially licensed on or after May 29, 1998, a minimum of one hundred (100) square feet of usable floor space shall be provided in a single bedroom. A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.2 For all facilities initially licensed before May 29, 1998, a minimum of eighty (80) square feet of usable floor space shall be provided in a single bedroom. A minimum of seventy (70) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.

16.2.3 Usable floor space shall be calculated only for that floor space having a ceiling height of a minimum of six (6) feet, except as provided in Section 16.2.4. Corridors, passageways, vestibules, alcoves, closets and wardrobe space shall be excluded from the calculations of usable floor space.

16.2.4 Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) may be counted toward usable floor space for the room.

16.2.5 There shall be no more than two (2) people in each room. Couples who are both residents of the facility have the right to share a room.

16.2.6 Each resident bedroom shall have a solid door that can be closed for privacy.

16.2.7 Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum required floor space per Sections 16.2.1 and 16.2.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. In air-conditioned buildings, at least one window in each room must be able to be opened.
16.2.8 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident bedroom. No resident room shall be used for access to other rooms or corridors. [Class III]

16.2.9 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing.

16.2.10 Each resident shall be offered a bed and mattress that is at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds do not meet this requirement.

16.2.11 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected.

16.2.12 For each bed there shall be offered:

   16.2.12.1 At least two (2) dresser drawers;
   16.2.12.2 A comfortable non-folding chair in good repair;
   16.2.12.3 A bedside table; and
   16.2.12.4 A reading lamp.

16.2.13 The facility shall permit and encourage residents to use their own furnishings, space permitting.

16.2.14 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair.

16.2.15 There must be a direct source of heat to each bedroom.

16.2.16 There shall be an adequate towel, linen and bedding supply in addition to those in use, so that a complete linen change is available in the facility at all times.

16.2.17 Residents shall not share bedrooms with members of the provider’s family who are not receiving assisted living services, unless the facility obtains written permission from the Department. Permission will be granted if the arrangement is in the resident’s best interest and is acceptable to the resident or the resident’s guardian or conservator.

16.3 Renting space. The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.
Section 17

Sanitation and Safety

17.1 Cleanliness. The facility must be kept clean and shall be maintained in a condition ensuring the health and safety of residents. All refuse collected in common areas or from resident’s rooms shall be stored in cleanable, rodent-proof, covered containers, pending removal. [Class III]

17.1.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

17.1.2 The administrator shall take immediate steps to correct any condition, in the physical facility or on the premises, which poses a danger to a resident’s life, health and/or safety. [Classes II/III]

17.2 Insect and rodent control. There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. Doors and windows used for ventilation must be screened.

17.3 Food safety and sanitation. Food shall be stored, prepared and served in a safe and sanitary manner. [Class III]

17.3.1 Kitchen and food preparation areas shall be located away from possible food contamination sources. [Class III]

17.3.2 Kitchen and food preparation areas must be clean, and food stored so as to be free from spoilage and contamination. [Class III]

17.3.3 All equipment, dishes, glassware and cooking utensils shall be in good repair. [Class III]

17.3.4 Refrigerator temperature shall not exceed forty-one degrees (41°) Fahrenheit. [Class II]

17.4 Bathrooms. Bathrooms must be safe, sanitary and in good repair.

17.4.1 Adequate indoor bathing and flush toilet facilities for the number of residents in the facility must be provided. For all facilities licensed on or after the effective date of these regulations, a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available.

17.4.2 Bathing facilities shall afford privacy.
17.4.3 If a resident needs grab bars to bathe safely, a bathing facility equipped with grab bars that meet the Americans with Disabilities Act standards will be required.

17.4.4 Facilities shall supply a sanitary means for washing and drying hands in bathrooms.

17.5 Telephone. There must be a listed telephone available to all residents.

17.6 Heat. Resident areas of the facility shall be maintained at a temperature of, at least, seventy degrees (70°) Fahrenheit or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. [Class III]

17.7 Hot water. Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. [Class III]

17.8 Exits. In facilities licensed prior to June 1, 1989, there must be at least two (2) usable exits that are remote from each other. In facilities initially licensed on or after June 1, 1989, there must be at least two (2) usable exit doors that are remote from each other. Exits must be clear of obstructions. [Class III]

17.9 Handrails. Inside and outside stairs are required to have handrails. Handrails on each side of the stairs may be required to meet the needs of residents. [Class III]

17.10 Private water supply. A private water supply shall be tested annually and a satisfactory result obtained. The Department will furnish the applicant with forms for water testing which must be submitted to the Division of Health Engineering. No license shall be issued to a facility that does not get its water from a municipal water system until:

17.10.1 A water analysis report has been obtained, indicating that the water supply meets the standards of the Division of Health Engineering, Department of Health and Human Services; or

17.10.2 An alternative source of water that meets those standards will be used until a satisfactory water analysis report is obtained. The alternate water source must be approved in writing by the Department. [Class III]

17.11 Poisonous and toxic materials. When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. [Class III]
17.12 **Animals.** There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly. *Class III*

17.13 **Dryer ventilation.** Dryers shall be vented to the exterior of the building. *Class III*
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED
June 1, 2006 [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between
_________________________________ (hereinafter “the Provider”) and
you, _________________________________. This contract describes your
financial obligations, as well as other responsibilities and rights. It also
describes the rights and obligations that apply to the Provider in the course
of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a
customized addendum but these additional provisions may not conflict with
or replace the use of the standard contract. The intent of having a standard
contract in Maine is to permit you to compare costs and services among
providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract,
you and the Provider agree as follows:

X.   STANDARDS

The Provider will help to further your independence and respect your
privacy and personal choices, including your choice to continue to reside
here for as long as the Provider and program, as it is fundamentally
designed, is able to meet your needs. The Provider’s programs will be
consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide
services, the Provider will assist you in making other arrangements including
moving somewhere else, if necessary.

XI.   PROVIDER LICENSE
The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine Department of Human Services and posted for public inspection in the ____________. This Provider is licensed as follows (check one):

- Level I Residential Care Facility
- Level II Residential Care Facility
- Level III Residential Care Facility
- Level IV Residential Care Facility
- Level I PNMI Residential Care Facility
- Level II PNMI Residential Care Facility
- Level III PNMI Residential Care Facility
- Level IV PNMI Residential Care Facility
- Type I Assisted Living Program
- Type II Assisted Living Program

This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

**XII. APPENDICES**

The following Appendices are attached and made a part of this contract:

☑️ Appendix A: Admissions Policy
☑️ Appendix B: Your Rights
Appendix C: Grievance Policy

Appendix D: Tenancy Obligations (check if this applies)

Appendix E: Additional terms in Customized Addendum (check if this applies)

Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider
XIV. **ADMISSION POLICY**

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

XV. **SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE**

A. You agree to purchase:

- [ ] Housing and Services.
- [ ] Housing Only.

B. You agree to pay the following current rate to the Provider:

- [ ] Daily rate of $________
- [ ] Monthly rate of $________

The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

The landlord is________________________________________.

The amount of your current monthly rent is _________.

DIII. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

22. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing
your health and safety or the health and safety of others;
23. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and
24. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:

28. Personal Supervision.

☐ Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
☐ Staff will accompany you to medical appointments
☐ The Provider provides an escort for regular travel
☐ The Provider has qualified staff in the building 24-hours/day
☐ Other ______________________________
☐ Additional provisions: See Appendix E

29. Assistance with activities of daily living. (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)

☐ Walking
Changing position in bed
Transferring from place to place
Dressing
Eating
Using the bathroom
Bathing
Personal hygiene, such as help washing your hair
Other

Additional Provisions: See Appendix E
30. Incidental activities of daily living.

- Using the telephone
- Handling your finances
- Banking
- Shopping
- Light housekeeping
- Heavy housekeeping
- Getting to appointments
- Barber/beautician services
- Other

Additional Provisions: See Appendix E

31. Medication assistance.

- Obtaining medications from the Pharmacy of your choice:

- Ordered by Provider
- Delivered by the Pharmacy
- Ordered by you/family member
- Picked up by Provider
- Picked up by you/family member

- Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)

- Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that
includes, for example, information that they have been administered at the right time and in the right dose

Other ____________________________________________

Additional Provisions: See Appendix E

32. Food Service.

☐ Meal preparation (including the cost of food) _____ times each day
☐ Meal preparation (food purchased separately by you) _______ times each day
☐ Nutritious between-meal snacks __________ times each day
☐ Special diets ordered by your physician as follows:
   ___________________________________________________
   _____

☐ Shopping for groceries you purchase
☐ Meal planning
☐ Other ____________________________________________

Additional Provisions: See Appendix E

33. Transportation services.

☐ Arranging transportation (cost of transportation included) _______ miles roundtrip
☐ Arranging transportation (cost of transportation not included)
☐ Transportation without escort to medical appointments within _________ miles roundtrip
☐ Transportation with escort to medical appointments within _________ miles roundtrip
☐ Other _____________________________________________

34. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not
nurses. The following nursing services are part of your daily/monthly rate:

☐ None
☐ Skilled nursing services provided by a registered professional nurse.
☐ Registered professional nurse who oversees staff and coordinates your health care needs.
35. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

☐ All housing costs (there will be no extra charges)
☐ All housing costs except:

___________________________________________________
___________________________________________________
___________________________________________________

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other
☐ Additional Provisions: See Appendix E
☐ You have a lease agreement with a landlord other than the Provider: See Appendix F

36. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

☐ None
☐ Non-prescription analgesics and antacids
☐ Bedroom furnishings:

___________________________________________________
___________________________________________________

☐ Pillows, sheets, linens, towels
1. Laundry supplies and equipment
2. Laxatives
3. Thermometers
4. Non-prescription skin creams/lubricants
5. Mouthwash
6. Toothpaste
7. Other non-prescription ointments: ___________________________
8. Shampoo
9. Soap
10. Facial tissue
11. Toilet tissue
12. Paper towels
13. Incontinence supplies
14. Other: ___________________________________________

10. Additional Services

See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time
frame: _________________________________. If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.

B. Source of payment for services covered by the daily/monthly rate:
   □ Self-pay
   □ Self-pay and billing to a third party: ____________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:
   □ Self-pay
   □ Other ________________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.
   □ There is a security deposit. This security deposit will not exceed one month’s rent (currently $___________), and will be refunded to you within thirty (30) days from date of discharge/death.

   □ The following costs may be deducted from the security deposit:
      ________________________________________________
      ______
Security deposits are part of your separate lease with the Landlord.

G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.

In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.

In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.
IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.

B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).

C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

☐ Manage own affairs
☐ Durable Financial Power of Attorney
☐ Health Care Power of Attorney
☐ Representative Payee
☐ Guardian
☐ Conservator
You agree to supply copies of all relevant information about those individuals who are responsible for your affairs as they relate to your care under this contract.

XII. CHANGES IN LAW

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.

XIII. SIGNATURES

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________
<table>
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<th>Signature of Provider Representative</th>
<th>Your Name</th>
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<td>Name of Provider</td>
<td>Your Signature or Signature of Your Agent</td>
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<td>Address</td>
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This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

V. Your Landlord is: ________________________________.

W. Your current monthly rent is:____________________.

X. Among other things, your lease provides that you will receive the following (check all that applies):

- All housing costs (there will be no extra charges)
- All housing costs except:

  _______________________________________________

  _______________________________________________

  _______________________________________________

- Semi-private room
- Shared bathroom
- Private room
- Private bathroom
- Efficiency apartment
- One Bedroom Apartment
- Two Bedroom Apartment
- Other

D. Your lease is attached here for reference.
REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF ASSISTED HOUSING PROGRAMS:

Level IV Private Non-Medical Institutions
Part of 10-144 Chapter 113
Effective Date (Last Amended): August 20, 2008

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF LICENSING AND REGULATORY SERVICES
State House Station 11
41 Anthony Ave.
Augusta, ME 04333-0011
(207) 287-9300
1-800-791-4080
TDD 1-800-606-0215
dlrs.info@maine.gov
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Section 1

Purpose

These rules establish minimum standards for the licensing of Level IV Private Non-Medical Institutions. These facilities are a type of Assisted Housing Program that provides assisted living services, as defined in Section 2. These rules require that services be individualized to meet resident needs and encourage each resident’s right to independence, choice and decision making, while living in a safe environment.

These rules governing the licensing and functioning of Assisted Housing Programs – Level IV – Private Non-Medical Institutions – shall become effective July 1, 2004.
Section 2

Definitions

The following terms have the meanings as specified.

2.1 “Abuse” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.

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

2.3 “Adult Day Services” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.

2.4 “Advance Directives” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.

2.5 “Aging in Place” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.

2.6 “Alzheimer’s/Dementia Care Unit” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

2.7 “Applicant” means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

2.8 “Assisted Housing Program” means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility, or a private non-medical institution.

2.9 “Assisted Housing Services” means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
2.9.1 Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

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

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.

2.10 “Assisted Living Program” means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

2.10.1 Type I - an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

2.10.2 Type II - an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.

2.10.2.1 Services of a Registered Professional Nurse; and/or

2.10.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by the unlicensed health care assistive personnel.

2.11 “Assisted Living Services” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:
2.11.1 "Administration of medications" means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;

2.11.2 "Nursing services" means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.

2.12 "Certified Nursing Assistant (CNA)" means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

2.13 "Certified Nursing Assistant/Medications (CNA/M)" means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.

2.14 "Deficiency" means a violation of State licensing regulations.

2.15 "Dementia" means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

2.16 "Department" means the Maine Department of Health and Human Services.

2.17 "Directed Plan of Correction" means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.

2.18 "Distinct Part" means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.

2.19 "Duly Authorized Licensed Practitioner" means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
2.20 **“Emergency”** means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.

2.21 **“Exploitation”** means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.

2.22 **“Failure to Make Timely Correction of Any Deficiency”** means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.

2.23 **“False Information”** means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.

2.24 **“Food Preparation Area”** means an area for the purpose of storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.

2.25 **“Functional Assessment”** means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.

2.26 **“Impede or Interfere with the Enforcement of Regulations”** means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.

2.27 **“Independent Housing with Services Program”** means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies.

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

2.29 **“Legal Representative”** means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.

2.30 **“Licensee”** means the person to whom a license is issued.
2.31 “Licensed Administrator” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. §61.

2.32 “Licensed Health Care Professional” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.

2.33 “Medication Error” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.

2.34 “Neglect” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

2.35 “Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.

2.36 “Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.

2.37 “Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.

2.38 “Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.

2.39 “Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.

2.40 “Private Non-Medical Institution (PNMI)” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Private non-medical institutions are a type of residential care facility that receives MaineCare funds and complies with additional requirements as specified in various sections of these rules. A PNMI provides housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas, unless the provider has beds located in scattered locations approved by the State Fire Marshal’s Office. It does not include licensed nursing homes, a supported living arrangement certified by the Department of Behavioral and Developmental Services, or a facility licensed as a residential care facility. Following are the types of private non-medical institutions:

2.40.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.40.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.
2.40.3 Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.40.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.41 “Provider” means the licensee.

2.42 “Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.

2.43 “Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.

2.44 “Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2.45 “Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.

2.46 “Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

2.47 “Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.

2.48 “Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.

2.49 “Resident Assessment Instrument (RAI)” is the assessment tool approved by the Department for use by the provider to obtain an accurate standardized, reproducible assessment of each resident’s functional capacity. It consists of the Minimum Data Set – Residential Care Assessment instrument (MDS – RCA), the training manual for the MDS-RCA tool, and any updates provided by the Department.

2.50 “Resident Rights” means those rights enumerated in Title 22 M.R.S.A. §7921 et seq. and 22 M.R.S.A. §7853(6) which apply to assisted housing programs, and also they're enumerated in Section 5 of these regulations.

2.51 “Residential Care Facility” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensed nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:
2.51.1 Level I - a facility with a licensed capacity of one (1) to two (2) residents.

2.51.2 Level II - a facility with a licensed capacity of three (3) to six (6) residents.

2.51.3 Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.

2.51.4 Level IV - a facility with a licensed capacity of more than six (6) residents.

2.52 “Residential Services Plan” means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.

2.53 “Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:

2.53.1 Which is intended to restrict freedom of movement or access to one’s body; or

2.53.2 Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

2.54 “Scattered Sites” means facilities with licensed private non-medical institution beds at scattered locations serving a minimum of four eligible members, as long as the service provided consistently fits within the definition of the applicable appendices in accordance with Chapter III, Section 97, of the MaineCare Benefits Manual.

2.55 “Self-Administration of Medication” means a resident takes his/her own medication(s) independent of a staff person preparing the medication for the individual.

2.56 “Shared Staffing” as defined in 22 M.R.S.A. §7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.

2.57 “Statement of Deficiencies (hereinafter SOD)” means a document issued by the Department, which describes deficiencies in complying with these regulations.

2.58 “Submit” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department.
2.59 “Tenancy Obligation” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.

2.60 “Unlicensed Health Care Assistive Personnel” means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living programs, residential care facilities, private non-medical institutions, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants. Unlicensed Health Care Assistive Personnel are also referred to as Unlicensed Assistive Personnel.

2.61 “Working Days” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.
Section 3

Licensing

3.1 Responsibility for compliance. The applicant/licensee shall comply with these regulations.

3.2 Unlicensed Level IV private non-medical institution (PNMI). No person, firm, partnership, association corporation or other entity shall manage or operate a Level IV private non-medical institution without a license.

3.3 Person license issued to. The license is only valid for the named licensee(s).

3.4 Application and licensure.

3.4.1 Application required. The applicant is required to submit a written application for a license on a form approved by the department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Private non-medical institutions - $10.00 each licensed bed.

3.4.2 Admission and scope of services policy. Facilities are required to provide the department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services consistent with applicable state and federal law.

3.4.3 Additional licensing requirements. Prior to the issuance of a license and prior to relicensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A Private Non-Medical Institution with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.1.2 A residential care facility or private non-medical institution with more than sixteen (16) beds must comply with the sections of the Life Safety Code that apply to large facilities and with the new residential board and care occupancy chapter if that facility is a new facility or
with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated thereunder, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);

3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing;

3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. §62 et seq. and

3.4.3.5 Provide evidence that all taxes applicable to PNMI's are current and up-to-date.

3.5 **Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

3.6 **Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.

3.7 **Issuance of license.** A new applicant will be notified by the department within two (2) weeks of filing an application whether the application is complete. The department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license. Any provider who is issued a license for scattered sites will have all the sites listed on the single license.

3.8 **Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.
3.9 **Number of licenses required.** When more than one type of facility or program is provided, the department may consider the following criteria in determining the number of licenses required:

3.9.1 The physical location;

3.9.2 The structure or management and ownership;

3.9.3 In facilities providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program, residential care facility, or private non-medical institution; and

3.9.4 The administrative and regulatory burdens and benefits of granting a given number of licenses.

The department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.

3.10 **Adult day services programs.** When an adult day services program is physically located in an assisted living program, residential care facility, or private non-medical institutions, separate licenses shall not be required. The adult day services programs shall comply with the Regulations Governing the Licensing and Functioning of Adult Day Services Programs and licensed capacity will be reflected on the license.

3.11 **Multilevel facility license.** For multilevel facilities, a single license will be issued by the department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities, adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the department will specify the particular levels in writing.

3.12 **Provisional license.** The department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the department but not to exceed twelve (12) consecutive months, to an applicant who:

3.12.1 Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;

3.12.2 Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and

3.12.3 Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or

3.12.4 Meets the criteria for default licensing.
3.13 **Conditional license.** The department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.

3.14 **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program, residential care facility, or private non-medical institution is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the facility/program.

3.15 **Term of license.** A license may be valid for two (2) years, as long as the department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:

3.15.1 “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

3.15.2 “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.

3.16 **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the department.

3.17 **Posting the license.** The licensee shall post a copy of the license at each of its licensed locations, where it can be seen and reviewed by the public.

3.18 **Right of entry.** The department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect the premises of a Level IV PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. An application for a Level IV private non-medical institution license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.
3.19 **Filing Plans of Correction.** Whenever the department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.

3.20 **Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the department have been corrected:

3.20.1 Issuance of a conditional license;

3.20.2 Refusal to issue or renew a license;

3.20.3 Revocation or suspension of a license; or

3.20.4 Refusal to issue a provisional license.

3.21 **Renewal.** A renewal application must be received by the department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the department may:

3.21.1 Verify any information in the renewal application and conduct an inspection of the facility/program;

3.21.2 Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

3.22 **Actions requiring prior written approval.** When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the department has determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 **Waivers.** The department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 **Informal review of waiver denial.** The applicant/licensee may appeal a decision of the department to deny a waiver request by submitting a written request for an informal review by the department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of notice or receipt of the date of the informal review decision by writing to the department. See also Section 4.10 of these regulations.
3.25 Rates and contracts.

3.25.1 Rates. Assisted housing programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each resident, or someone authorized to act on the resident’s behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions. The resident and/or resident’s legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident’s file. No one other than the resident shall incur any responsibility for the resident’s obligations by signing the contract for admission of the resident. Financial responsibility for the resident’s expenses can only be assumed according to Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program’s basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions as long as they are consistent with the applicable assisted housing rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar day’s notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident’s legal representative, who requests additional services not included in the existing contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month’s rent in an assisted living program which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.

3.25.3.5 No contract may contain a provision which provides for the payment of attorney fees or any other cost of collecting payments from the resident.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;
3.25.3.6.2 Tenancy obligations;

3.25.3.6.3 Resident rights; and

3.25.3.6.4 Copy of the admissions policy.

3.25.3.7 The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident’s expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident’s expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:

3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident’s expenses with your own money.

3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.

3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.

3.26 Information to residents. The licensee must provide an information packet that includes the following information to the resident and/or resident’s legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:

3.26.1 Advance Directives information;

3.26.2 Information regarding the type of facility and the licensing status;

3.26.3 The Maine Long Term Care Ombudsman Program brochure;

3.26.4 The department’s toll-free telephone numbers for the Office of Advocacy, Adult Protective Services, and the Division of Licensing and Regulatory Services, Community Services Programs,

3.26.5 The process and criteria for placement in, or transfer or discharge from, the program; and

3.26.6 The program’s staff qualifications.
3.27 Information for residents of Alzheimer’s/dementia units. When a provider operates a unit meeting the requirements of a Designated Alzheimer’s/Dementia Care Unit as all or part of its program, residents and family members, or any other authorized representative must be provided the following information:

3.27.1 A written statement of philosophy;

3.27.2 The process used for resident assessment and establishment of a residential services plan and its implementation;

3.27.3 Those physical environment and design features that support the functioning of adults with cognitive impairments;

3.27.4 The frequency and types of group and individual activities provided by the program;

3.27.5 A description of family involvement and the availability of family support programs;

3.27.6 A description of security measures provided by the facility;

3.27.7 A description of in-service training provided for staff; and

3.27.8 Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

3.28 Refunds. Refunds are to be managed as follows:

3.28.1 If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident’s legal representative or the resident’s estate for any advance payments on a pro-rated basis.

3.28.2 Refunds shall be made within thirty (30) calendar days of date of discharge or death.

3.28.3 If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.
3.29 **Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner’s family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. *(Class IV)*

3.30 **Tenancy obligation.** Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

3.31 **Administrative and resident records.**

3.31.1 **Confidentiality.** All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.

3.31.2 **Location of records.** All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.

3.31.3 **Inspection of records.** All reports and records shall be made available for inspection upon request by the department, the Long Term Care Ombudsman Program or the Maine Attorney General’s Office without the consent of the resident or his/her legal representative.

3.31.4 **Record retention.** All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.

3.31.5 **Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.

3.31.6 **Disaster plan.** Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

3.32 **Confidential information.** Pursuant to 22 M.R.S.A. §7703, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested, except as provided by law.
Section 4

Enforcement Procedures

4.1 Inspections required. The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The department has the right to interview residents and employees in private. [Class I]

4.2 Frequency and type of inspections. An inspection may occur:

4.2.1 Prior to the issuance of a license;
4.2.2 Prior to renewal of a license;
4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;
4.2.4 When there has been a change or proposed change in administrator, physical plant or services;
4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;
4.2.6 For routine monitoring of resident care; or
4.2.7 Any time the department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 Licensing records kept by the department. The department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

4.4 Complaints. The department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.

4.5 Enforcement process.

4.5.1 After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.
4.5.2 The licensee shall complete a POC for each deficiency, sign the plan and submit it to the department within ten (10) working days of receipt of any SOD.
4.5.3 Failure to correct any deficiency(ies) or to file an acceptable POC with the department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.
4.5.4 Informal conference. If a licensee disagrees with the imposition or amount of any penalty assessed by the department, the licensee must submit a written notification to the department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Assistant Director of Licensing and Regulatory Services, Community Services Programs or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

4.6 Grounds for intermediate sanctions. The following circumstances shall be grounds for the imposition of intermediate sanctions:

4.6.1 Operation of an assisted living program or Private Non-Medical Institutions without a license;

4.6.2 Operation of an assisted living program or Private Non-Medical Institutions over licensed capacity;

4.6.3 Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;

4.6.4 Failure to submit a POC within ten (10) working days after receipt of an SOD;

4.6.5 Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;

4.6.6 Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.

4.7 Intermediate sanctions. The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:

4.7.1 The assisted living program, residential care facility, or private non-medical institution may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the department approves, until such time as it determines that corrective action has been taken.

4.7.2 The department may issue a Directed POC or Conditional License.

4.7.3 The department may impose a financial penalty.
4.8 Financial penalties.

4.8.1 Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.

4.8.2 Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., “Class I”). Classifications have been established according to the following standards:

4.8.2.1 Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).

4.8.2.2 Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).

4.8.2.3 Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).

4.8.2.4 Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.

4.8.3 Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

4.8.4 If the department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.
4.8.5 The amount of any penalty to be imposed shall be calculated according to the following classification system:

4.8.5.1 Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; $6.00 per resident per occurrence per day

Operation of an assisted living program or residential care facility over licensed capacity, or

Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure.

4.8.5.2 Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; $5.00 per resident per occurrence per day

Failure to submit a POC within ten (10) working days after receipt of an SOD; or

Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license.

4.8.5.3 The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3; $4.00 per resident per occurrence per day

The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4.

4.8.6 The department may impose a penalty upon a licensee of a Level IV PNMI for a violation of these rules. Each day of violation constitutes a separate offense. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to $10 times the total number of residents in the facility per violation, up to a maximum of $10,000 for each instance in which the department issues a statement of deficiency to a licensee of a Level IV PNMI.

4.8.7 Failure to comply with 22 M.R.S.A. §7904-A (6) regarding time drills, as further described in Section 16.21.7, commits a civil violation for which a forfeiture of not more than $25 per bed for each occurrence of failure to comply may be adjudged.

4.8.8 Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

4.8.8.1 In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.

4.8.8.2 In order to have a fine reduced, a provider must supply sufficient information to the department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.
4.8.8.3 The department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

4.9.1 When an applicant fails to comply with applicable laws and regulations, the department may refuse to issue or renew a license to operate an assisted living program, residential care facility, or private non-medical institution.

4.9.2 If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the department shall permit the department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

4.9.3 Upon investigation, whenever conditions are found which, in the opinion of the department, immediately endanger the health or safety of the persons living in or attending the assisted living program, residential care facility, or private non-medical institution, the department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. §184, subsection 6.

4.9.4 Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program, residential care facility, or private non-medical institution, or conduct or practices detrimental to the welfare of persons living in or attending the facility/program. When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5 M.R.S.A., Chapter 375 §10051.

4.9.5 Pursuant to Title 22 M.R.S.A. §7931 et seq., the department may petition the Superior Court to appoint a receiver to operate the assisted living program, residential care facility, or private non-medical institution in the following circumstances:

4.9.5.1 When the assisted living program, residential care facility, or private non-medical institution intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;

4.9.5.2 When an emergency exists which threatens the health, security or welfare of residents; or

4.9.5.3 When the assisted living program, residential care facility, or private non-medical institution is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.
4.10 Appeal rights. Any assisted living program, residential care facility, or private non-medical institution aggrieved by the department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the department’s decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A. §9051 et seq. Administrative hearings will be held in conformity with the department’s Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Assistant Director of Licensing and Regulatory Services, Community Services Programs and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the department’s decision to:

4.10.1 Issue a conditional license;
4.10.2 Amend or modify a license;
4.10.3 Void a conditional license;
4.10.4 Refuse to issue or renew a full license;
4.10.5 Refuse to issue a provisional license;
4.10.6 Stop or limit admissions;
4.10.7 Issue a directed POC;
4.10.8 Affirm or modify an Assessment of Penalties after an informal review;
4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or
4.10.10 Deny a request for a waiver of a rule.
4.11 **Surveillance and Utilization Review:** The provider will cooperate with the department’s Surveillance and Utilization Review (SUR) Unit and/or the department’s authorized designee who carries out a program of safeguarding against unnecessary or inappropriate utilization of, and excess payments for, care and services available under MaineCare and assessing the quality.

4.12 **Operating without a license**

4.12.1 **License required.** A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license, manage or operate a Level IV PNMI.

4.12.2 **Civil penalty for operating without a license.** A person, firm, partnership, association, corporation or other entity who operates a Level IV PNMI without a license commits a civil violation and is subject to a civil penalty of not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

4.12.3 **Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of section 4.12.

4.12.4 **Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of section 4.12.

4.12.5 **Jurisdiction.** The District Court has jurisdiction pursuant to 4 M.R.S.A. §152 for violations of section 4.12.

4.12.6 **Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of section 4.12 occurred.

4.12.7 **Right of entry.** To inspect the premises of a Level IV PNMI that the department knows or believes is being operated without a license, the department may enter only with the permission of the owner or the person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

4.12.8 **Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed Level IV PNMI with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine compliance with section 4.12. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license.

4.12.9 **Noninterference.** An owner or person in charge of an unlicensed Level IV PNMI may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

4.12.10 **Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under section 4.12 shall pay to the State a fine of not less than $500 nor more than $10,000 for each violation. Each day of violation constitutes a separate offense.
4.12.10.1 In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under section 4.12, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

4.12.10.2 In an action under section 4.12, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.
Section 5

Resident Rights

5.1 Resident rights. The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices. [Class IV]

5.2 Freedom of choice of provider. For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice. [Class IV]

5.3 Rights regarding transfer and discharge. Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution; [Class IV]

5.3.2 A resident’s continued tenancy constitutes a direct threat to the health or safety of others; [Class IV]

5.3.3 A resident’s intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there; [Class IV]

5.3.4 A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident; [Class IV]

5.3.5 When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; [Class IV] or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered. [Class IV]

5.4 Transfer or discharge. When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. [Class IV] Each notice must be written and include the following:

5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; [Class IV]
5.4.2 The effective date of the transfer or discharge; [Class IV]

5.4.3 Notice of the resident’s right to appeal the transfer or discharge as set forth in Section 5.28; [Class IV]

5.4.4 The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; [Class IV]

5.4.5 In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)); [Class IV]

5.4.6 The resident’s right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. [Class IV]

5.5 Emergency transfer or discharge. When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident’s representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. [Class IV]

5.6 Leaves of absence. When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.3 are present and the resident or resident’s legal representative has been given notice as may be required in these regulations. [Class IV]

5.7 Assistance in finding alternative placement. Residents who choose to relocate shall be offered assistance in doing so.

5.7.1 Residents of assisted living programs, residential care facilities or private non-medical institutions shall not be required to give advance notice. [Class IV]

5.8 Right to communicate grievances and recommend changes. The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. The resident has the right to be assisted throughout the grievance by a representative of his/her choice. Section 5.25 of these regulations list advocacy services which may be available to resident. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances, and shall notify residents upon admission of their right to file a grievance and information about how to do so. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. [Class IV]
5.8.1 Residents who are class members under the AMHI consent decree may also file grievances alleging a violation of the terms of the AMHI settlement agreement. The grievances may be brought by or on behalf of individuals or groups of class members. If the grievances include allegations of employee misconduct, no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with the provider’s personnel policies and with any employment contract provisions.

A class member who files a grievance is entitled to a hearing conducted by an impartial hearing officer, who may be employed by the provider but who must not have been directly involved in the incident. The hearing officer must hold a hearing, either in person or by telephone; must accept evidence from both parties, including testimony of witnesses; and must make a decision in writing promptly after the hearing. The hearing must be recorded verbatim. The hearing must be expedited if the resident can establish that an emergency will exist if the grievance is not resolved very soon.

5.9 Right to manage financial affairs. Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. [Class IV]

5.10 Right to freedom from abuse, neglect or exploitation. Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. [Class I, II, III, IV]

5.11 Rights regarding restraints and aversive conditioning. There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. [Class I, II, III, IV]

5.11.1 Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. [Class I, II, III, IV]

5.11.2 In the case of a person with mental retardation, the provider must comply with the requirements of the Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation and the Regulations Governing the Use of Restraints in Community Settings. These regulations are promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)). [Class I, II, III, IV]

5.11.3 For any resident who is a client of the Department of Health and Human Services, (formerly known as the Department of Behavioral and Development Services (BDS)) due to his/her mental illness, the facility/program shall comply with the Rights of Recipients of Mental Health Services, promulgated and enforced by the Department of Health and Human Services (formerly known as the Department of Behavioral and Development Services (BDS)). [Class I, II, III, IV]
5.12 **Right to confidentiality.** Residents’ records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state of federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other person except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from the facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals, groups, or categories with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. [Class IV]

5.13 **Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility. [Class IV]

5.14 **Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. [Class IV]

5.15 **Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. [Class IV]

5.16 **Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. [Class IV]

5.17 **Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider’s ability to meet the purpose of these rules. [Class IV]

5.18 **Couples.** A couple residing in an assisted housing program has the right to share a room. [Class IV]
5.19 Right to be informed of services provided by the facility/program. Residents shall be fully informed of items or services which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. [Class IV]

5.20 Right to refuse treatment or services. Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident’s duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident. [Class IV]

5.21 Right to be free from discrimination. A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. [Class IV]

5.22 Right to information regarding deficiencies. Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to, decisions to issue a Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. [Class IV]

5.23 Notification of Residents Rights. The provider shall inform each resident and legal representative of these rights prior to or at admission and shall provide them with a copy of these rights. In addition, the provider shall inform each resident and legal representative, within thirty (30) calendar days of any changes to Section 5 and shall provide them with a copy of the change. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. [Class IV]

5.24 Bill of rights for persons with mental retardation. Facilities/programs serving persons with mental retardation shall post and comply with the Bill of Rights for Persons with Mental Retardation, Title 34-B M.R.S.A. §5601 et seq. [Class IV]

5.25 Mandatory report of rights violations. Any person or professional who provides health care, social services or mental health services or who administers a long term care facility or program who has reasonable cause to suspect that the regulations pertaining to residents’ rights or the conduct of resident care have been violated, shall immediately report the alleged violation to the Department of Health and Human Services (1-(800) 383-2441) and to one or more of the following:

Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. §19501 through §19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. §5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. §1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. §3470 through §3487.
Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

Mandated reporters shall contact the Department of Health and Human Services (1-(800) 383-2441) immediately after receiving and/or obtaining information about any rights violations. [Class IV]

5.26 **Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to reside in an assisted living program, residential care facility, or a private non-medical institution, the provider shall:

5.26.1 Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. [Class IV]

5.26.2 Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. [Class IV]

5.27 **Right of action.** In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. §7948 et seq. [Class IV]

5.28 **Right to appeal an involuntary transfer or discharge.** The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to the Assistant Director, Division of Licensing and Certification, Community Services Programs for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. [Class IV]
5.29 **Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident’s legal representative, as defined in Section 2.29 of these Regulations. [Class IV]

5.30 **Resident councils**

5.30.1 Residents of assisted living programs, residential care facilities and private non-medical institutions have the right to establish a resident council, pursuant to Title 22 M.R.S.A. §7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.

5.30.2 If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.

5.30.3 The council has the following rights:

5.30.3.1 To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved; [Class IV]

5.30.3.2 To establish procedures that will ensure that all residents are informed about and understand their rights; [Class IV]

5.30.3.3 To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement; [Class IV]

5.30.3.4 To help identify residents' problems and recommend ways to ensure early resolution; [Class IV]

5.30.3.5 To inform the administrator of the opinions and concerns of the residents; [Class IV]

5.30.3.6 To find ways of involving the families and residents of the facility; [Class IV]

5.30.3.7 To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and [Class IV]

5.30.3.8 To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. [Class IV]

5.31 **Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies. [Class IV]
Section 6

Alzheimer’s/Dementia and Other Specialty Unit Standards

6.1 Alzheimer’s/Dementia Care Units. A facility or unit designated as an Alzheimer’s/Dementia Care Unit shall comply with the following regulations and the facility must have received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer’s/Dementia unit, the resident’s individual record must contain:

   6.2.1.1 Documentation of the legal representative’s authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

   6.2.1.2 Documentation of a physician’s diagnosis of Alzheimer’s disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with Alzheimer/Dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimer’s/Dementia care unit shall have:

   6.3.1.1 Adequate space for dining, group and individual activities and family visits;

   6.3.1.2 For facilities licensed after May 29, 1998, secured outdoor space and walkways which allow residents to ambulate, but prevent undetected egress;

   6.3.1.3 High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;

   6.3.1.4 Non-reflective floors, walls and ceilings;
6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and

6.3.1.6 A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

### 6.3.2 Physical environment

The designated Alzheimers'/Dementia care unit shall:

6.3.2.1 Provide freedom of movement for the residents between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual residents;

6.3.2.3 Label or inventory all resident’s possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify resident’s rooms as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

### 6.3.3 Physical Safety

6.3.3.1 The designated Alzheimers'/Dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.
6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.

6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimers'/Dementia Care Units. All facilities with Alzheimers’/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.4.3 Social activities (e.g., games, music, reminiscing, etc.);

6.4.4 Crafts (e.g., decorations, pictures, etc.);

6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.4.7 Spiritual activities.

6.5 Pre-service training for Alzheimers’/Dementia Care Units. For pre-service training, all facilities with Alzheimers’/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimers’ disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimers’ Disease/Dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimers’ Disease and related dementias;

6.5.2 Communication basics;

6.5.3 Creating a therapeutic environment;

6.5.4 Activity focused care;
6.5.5 Dealing with difficult behaviors; and
6.5.6 Family issues.

6.6 **Specialty Units other than Alzheimers’/Dementia**

6.6.1 **Design standards.** The unit shall be designed to accommodate residents who will be admitted to the unit.

6.6.2 **Program standards:** Program standards shall be in accordance with accepted industry standards.

6.7 **Therapeutic activities.** All facilities with specialty care units shall offer the following types of individual or group activities in accordance with the assessed needs of the residents:

6.7.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.7.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.7.3 Social activities (e.g., games, music, reminiscing, etc.);

6.7.4 Crafts (e.g., games, music, reminiscing, etc.);

6.7.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.7.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.7.7 Spiritual activities.

6.8 **Pre-service training for Specialty Care Units.** For pre-service training, all facilities must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals specific to that specialty. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to care, the eight (8) hours of classroom orientation shall include the following topics:

6.8.1 A general overview of the related specialty;

6.8.2 Communication basics;

6.8.3 Creating a therapeutic environment;
6.8.4 Activity focused care;
6.8.5 Dealing with difficult medical issues and/or behaviors; and
6.8.6 Family issues.
Section 7

Medications And Treatments

7.1 Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. [Classes I/II/III]

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. [Classes I/II/III]

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to safe and proper use. Documentation of training shall be included in the employee record.

7.1.4 Unlicensed assistive personnel must be trained by a registered professional nurse in regard to the management of persons with diabetes. The registered professional nurse must provide in-service training and documentation to include: [Class III]

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation;

7.1.4.6 Treatment and prevention of insulin reaction including signs/symptoms;

7.1.4.7 Foot care;
7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and
7.1.4.9 Standard Precautions.

Documentation of training shall be included in the employee record.

Review of this training shall be on an annual basis.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.1.6 For those residents for whom the facility is responsible for assistance with medication administration, no medications, including those brought into the facility by the resident, family or friends, shall be administered or discontinued without a written order signed by a duly authorized licensed practitioner or other person licensed to prescribe medications. [Class III]

7.1.7 Orders for medications and treatments shall be in writing, signed and dated by a duly authorized licensed practitioner and shall be in effect for the time specified by the duly authorized licensed practitioner, but in no case to exceed twelve (12) months, unless there is a written reorder. Orders for psychotropic medications shall be reissued every three (3) months, unless otherwise indicated by the duly authorized licensed practitioner. Standing orders for individual residents are acceptable when signed and dated by the duly authorized licensed practitioner.

7.1.7.1 Upon admission to another facility, all existing orders are no longer in effect. Upon return to the facility, all orders must be reviewed and approved by the resident's duly authorized licensed practitioner within 72 hours. During that timeframe, orders that are signed and dated by the discharging duly authorized licensed practitioner are the current acceptable orders. Prior to admission to another facility all medications must be removed from service and placed in a locked area in accordance with Section 7.7.

7.6 Administration of medications.

7.2.1 Self-administration. Upon admission, each individual’s ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner and a facility representative.

7.2.2 Medications administered by facility. For those medications and/or associated treatments for which the facility is responsible, the following apply:
7.2.2.1 Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Written dated orders for telephone orders must be signed by the duly authorized licensed practitioner within five (5) working days. [Class III]

7.2.2.2 Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy regulations.

7.2.3 **Unlicensed assistive personnel.** Unlicensed assistive personnel administering medications and/or treatments must successfully complete training approved by the Department. There shall be evidence available in the facility that such training has been successfully completed. Whenever the standards or guidelines of the medication administration course are substantially revised, unlicensed personnel must be re-certified within one (1) year of the revision, by a method approved by the Department. An additional exception will be made on a case-by-case basis for persons who only administer dietary supplements and/or minor medicated treatments, shampoos, lotions and creams that could be obtained over the counter without a physician’s order.

A person qualified to administer medications must be on site at the facility whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

All unlicensed assistive personnel administering medications and/or treatments must complete a Department-approved eight (8) hour refresher course biennially for re-certification within two (2) years of the original certification. [Class III]

7.2.4 **PRN Medications.**

7.2.4.1 **PRN Psychotropic medications.** Psychotropic medications ordered “as needed” by the duly authorized licensed practitioner, shall not be administered unless the duly authorized licensed practitioner has provided detailed behavior-specific written instructions, including symptoms that might require use of medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a twenty-four (24) hour period. Facility staff shall notify the duly authorized licensed practitioner within twenty-four (24) hours when such a medication has been administered, unless otherwise instructed in writing by the duly authorized licensed practitioner.

7.2.4.2 A person qualified to administer medications must be on site at the assisted living program, residential care facility, or private non-medical institution whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.
In no event, however, shall antipsychotic-type psychotropic medications be prescribed on a PRN basis only, having no routinely scheduled and administered doses.

### 7.3 Medication storage.

**7.3.1** Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. *[Class III]*

**7.3.2** Medications administered by the assisted living program, residential care facility, or private non-medical institutions shall be kept in their original containers in a locked storage cabinet. The cabinet shall be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each resident's medications. It shall be locked when not in use and the key carried by the person on duty in charge of medication administration. *[Class III]*

**7.3.3** Medications/treatments administered by the assisted living program, residential care facility or private non-medical institution for external use only shall be kept separate from any medications to be taken internally. *[Class III]*

**7.3.4** Medications administered by the assisted living program, residential care facility or private non-medical institution, which require refrigeration, shall be kept safely stored and separate from food by placement in a special tray or container, except vaccines, which must be stored in a separate refrigeration unit that is not used to store food. Refrigeration shall be forty-one (41) degrees Fahrenheit or below. A thermometer shall be used to ensure proper refrigeration. *[Class III]*

### 7.4 Temporary absences. When a temporary absence from the facility is expected to be greater than seventy-two (72) hours, medications leaving the facility (except those by residents who self-administer) must be in a form packaged and labeled by a pharmacist. For medications leaving the facility for seventy-two (72) hours or less, the medication shall be packaged in such a way as to facilitate self-administration or administration by a responsible party of the correct medication at the appropriate time. Properly certified or licensed staff will use acceptable methods and procedures for preparing medications for leaving the facility. Staff will follow the same policies used in the facility for administering medications. The name of the resident and the name and strength of each drug, as well as the directions from the original prescription package, should be conveyed to the resident or their responsible party along with all cautionary information in writing, either directly on an envelope containing the appropriate dose or on a separate instruction sheet. If the medication is sent in original container, pills must be counted and documented upon leaving and returning to the facility. *[Class III]*

### 7.5 Medication labeling. Each prescription dispensed by a pharmacy shall be clearly labeled in compliance with requirements of the Commission on Pharmacy and shall include at least the following:
7.5.1 Prescription number;
7.5.2 Resident's full name;
7.5.3 Name, strength and dosage of the drug;
7.5.4 Directions for use;
7.5.5 Name of prescribing duly authorized licensed practitioner;
7.5.6 Name and address of issuing pharmacy;
7.5.7 Date of issue of latest refill;
7.5.8 Expiration date; and
7.5.9 Appropriate accessory and cautionary instructions.

7.6 Improperly labeled medications. For medications administered by the assisted living program, residential care facility, or private non-medical institution, all pharmaceutical containers having soiled, damaged, incomplete, incorrect, illegible or makeshift labels shall be returned to the original dispensing pharmacy for relabeling within two (2) working days or shall be disposed of in accordance with the requirements contained in Section 7.9. [Class III]

7.7 Expired and discontinued medications. For medications administered by the assisted living program, residential care facility, or private non-medical institution, medications shall be removed from use and properly destroyed after the expiration date and when discontinued, according to procedures contained in Section 7.9. They shall be taken out of service and locked separately from other medications until reordered or destroyed. [Class III]

7.8 Medication owned by residents. Prescribed medicines are the property of the resident and shall not be given to or taken by other residents or any other person.

7.9 Destroying medications. For medications administered by the assisted living program, residential care facility, or private non-medical institutions, all discontinued medications, expired medications or medications prescribed for a deceased resident, except controlled substances and individual doses, shall be destroyed by the administrator or the administrator’s designee and witnessed by one (1) competent person who is not a resident. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the pharmacist and a credit or rebate made to the person(s) who originally paid for the medication. Amounts destroyed or returned shall be recorded on the resident's record, with the signature of the administrator or the administrator’s designee and witness(es). Destruction or return to the pharmacy shall take place within sixty (60) calendar days of expiration or discontinuation of a medication or following the death of the resident.
7.10 **Schedule II controlled substances.** Schedule II controlled substances listed in the Comprehensive Drug Abuse Act of 1970, Public Law 91-513, Section 202 and as amended pursuant to Section 202 are subject to the following standards. [Class II]

7.10.1 For all Schedule II controlled substances, there shall be an individual record in which shall be recorded the name of the resident, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand. [Class II]

7.10.2 There shall be a recorded and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the facility that day. [Class II]

7.10.3 All Schedule II controlled substances on hand shall be counted at least weekly and records kept of the inventory in a bound book with numbered pages, from which no pages shall be removed. [Class II]

7.10.4 All Schedule II controlled substances shall be stored under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall. [Class II]

7.10.5 All excess and undesired Schedule II controlled substances in the possession of a licensed facility that are no longer required for a resident, shall be disposed of in the following manner. The Administrator or a licensed or registered nurse shall list all such unused substances and keep the same in a securely locked area apart from all other drugs. Disposal shall be in the form of incineration or flushing into the sewage system only in the presence of an authorized representative of the Department, a licensed pharmacist, a member of the Commission on Pharmacy or an authorized representative of the Drug Enforcement Agency. At least one (1) of the persons must be a person who did not dispense the drug or who was the last person to inventory the drug. Documentation of such destruction shall be made on the resident's record and in the inventory record required in Section 7.10.3, signed by the individual authorized to dispose of the drug. [Class II]

7.11 **Bulk supplies.** Facilities may stock in bulk supply those items regularly available without prescription at a pharmacy.

7.12 **Medication/treatment administration records (MAR) for medications administered by the assisted living program, residential care facility or private non-medical institution.**

7.12.1 Individual medication/treatment administration records shall be maintained for each resident and shall include all treatments and medications ordered by the duly authorized licensed practitioner. The name of the medication, dosage, route and time to be given shall be recorded in the medication/treatment administration record. Documentation of treatments ordered and time to be done shall be maintained in the same manner. These rules apply only to treatments ordered by licensed health care professionals. [Class III]
Whenever a medication or treatment is started, given, refused or discontinued, including those ordered to be administered as needed (PRN), the medication or treatment shall be documented on the medication/treatment administration record. It shall be initialed by the administering individual, with the full signature of the individual written on the first page of each month’s MAR. A medication or treatment shall not be discontinued without evidence of a stop order signed and dated by the duly authorized licensed practitioner. [Class III]

Medication errors and reactions shall be recorded in an incident report in the resident's record. Medication errors include errors of omission, as well as errors of commission. Errors in documentation or charting are errors of omission. [Class II]

Administration of medications ordered as needed (PRN) shall be documented and shall include date, time given, medication and dosage, route, reason given, results or response and initials or signature of administering individual. Treatments ordered PRN shall be documented in the same manner.

Medication containers. Graduated medicine containers, for the accurate measurement of liquid medications, shall be used. If not disposable, medicine containers shall be returned to the facility's dishwashing unit for sanitization after each use. Only sterile disposable syringes and needles shall be used for insulin injection. Disposable medicine containers shall not be reused. [Class III]

Breathing apparatus. When the facility assists a resident with a hand-held bronchodilator, metered dose nebulizers, intermittent positive pressure breathing machine or oxygen machine, there shall be documentation of the following:

1. The names of staff who are qualified or trained to use the equipment and/or to mix medications, the nature of their training, the date and who provided it;
2. The name of the distributing agency and the frequency and specific directions for cleaning the equipment; and
3. The resident’s record shall contain a copy of the duly authorized licensed practitioner’s order, possible side effects to be monitored, specific instructions as to when the duly authorized licensed practitioner must be notified regarding side effects and instructions to the resident on the use of the breathing apparatus.

First aid kit. A first aid kit containing supplies which may be necessary for the first aid treatment of minor injuries such as cuts, scrapes or first degree burns shall be included and available in the facility. All staff shall be instructed in the use of any item in the kit.
7.16 Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or medical equipment not specifically outlined in these Regulations, there must be documentation in the employee file.

7.17 Whenever employees are provided in service training or are taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.
8.1 Licensed Staff. Prior to employing licensed staff, the facility must verify that the person has a valid and current license.

8.22 Employing CNA’s and CNA-M’s. Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if the CNA or CNA-M has been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, or if the CNA or CNA-M has been the subject of a substantiated complaint involving abuse, neglect or misappropriation of patient/client/resident funds in a health care setting by the Department, the individual cannot be employed to function as a CNA or CNA-M.

8.23 Prohibited Employment. The facility may not hire as unlicensed assistive personnel as defined in section 2.58 an individual who is prohibited from employment as a certified nursing assistant as outlined below and in section 8.4:

8.23.1 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of property in a health care setting; and

8.23.2 An individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual:

8.23.2.1 Has been the subject of a complaint involving abuse or neglect that was substantiated by the department pursuant to its responsibility to license hospitals, nursing facilities, home health agencies and assisted housing programs and that was entered on the Maine Registry of Certified Nursing Assistants; or

8.23.2.2 Has been the subject of a complaint involving the misappropriation of property in a health care setting that was substantiated by the department and entered on the Maine Registry of Certified Nursing Assistants.

8.24 Time Limit on Consideration of Prior Criminal Conviction: Except as otherwise provided in this section, an individual may not be employed in a hospital, nursing facility, home health agency or assisted housing program as a certified nursing assistant if that individual has a prior criminal conviction within the last 10 years of:

8.24.1 A crime for which incarceration of 3 years or more may be imposed under the laws of the state in which the conviction occurred;
8.24.2 A crime for which incarceration of less than 3 years may be imposed under the laws of the state in which the conviction occurred involving sexual misconduct or involving abuse, neglect or exploitation in a setting other than a health care setting.

8.25 Exception: The restrictions on employment under sections 8.3.1 and 8.3.2 do not apply to an individual listed and active on the Maine Registry of Certified Nursing Assistants prior to the effective date of Title 22 M.R.S.A. §1812-G(8) as long as the individual meets other state and federal requirements for certified nursing assistants and continues to maintain an active status by timely re-registration as required by the rules.

8.26 Notification: A nursing assistant training program must notify applicants to that program of the restrictions under 8.3.1 and 8.3.2 prior to the acceptance of any applicant.
Section 9

Scope of Licenses

9.1 Beds to be located in distinct part of facility. In facilities providing more than one licensed level of care, assisted living services must be provided in a physically distinct part of the facility. An independent building, floor or wing containing only Level IV beds may constitute a distinct part. Several beds physically proximate to one another, such as all beds on one side of a corridor or on one level of a hall, may qualify as a distinct part, but such determination must be made by the Department upon written request prior to the operation of such a distinct part. The Department will approve the request only if it is shown that such a distinct part will comply with all laws and regulations and no other reasonable alternatives are available.

9.2 Resident care limitations.

9.2.1 Application of admission criteria. The facility shall determine whether each resident admitted to the facility meets the admission criteria in accordance with Section 3.4.2 and shall not refuse admission if these criteria are met, except as provided below. If, upon reasonable inquiry, it is determined that the individual meets the admission criteria but requires professional or skilled services beyond those assisted living services described in Section 2.11, the facility may admit the resident provided the nursing needs of the resident can be met. Registered and licensed nurses employed in or operating a Level IV facility, home health nurses and nurses in private practice whose services to residents exceed those described as assisted living services may not delegate those nursing duties, such as ongoing observation and assessment, to unlicensed assistive personnel employed by the facility.

9.2.2 Evacuation capabilities. Each facility will receive a rating from the Office of State Fire Marshal as follows: prompt, slow or impractical. These ratings are based on the building’s features and systems, as required by the applicable chapter of the NFPA 101 Life Safety Code, and as further defined in Section 3.4.3. To comply with each facility’s rating, the facility:

9.2.2.1 May inquire into the applicant’s ability to comply with evacuation standards applicable to the residence, provided such inquiries are made of all applicants.

9.2.2.2 Shall comply with Section 5.26 when applicants or residents, due to disability, cannot demonstrate that they are able to evacuate the facility in accordance with the facility’s rating.

9.2.3 Other permissible exclusions. Nothing in these rules requires that a facility admit any person whose tenancy would constitute a direct threat to the health or safety of other individuals, any person whose tenancy would result in substantial physical damage to the property of the facility or those persons living in or working in the facility, or those persons who cannot meet the admission criteria or tenancy obligations in spite of the provision of reasonable accommodation and modification as required by Section 5.26.
9.3 **Facilities operated by the Church of Christ, Scientist.** Facilities conducted in accordance with the practice and principle of the body known as the Church of Christ, Scientist, shall be subject to the provisions of these regulations for licensure, except that nothing in these rules and regulations shall be construed as requiring any medical supervision, regulation or control of the medical care and treatment of residents which is inconsistent with the practice and principles of the Church of Christ, Scientist. A license to operate shall only be issued based upon conditions of safety and sanitation and other requirements which do not relate to medical supervision. The facility is required to certify annually that it operates in accordance with the practice and principles of the Church. The facility must inform the public, through the name of the home and any publicity thereon, that it is operated in accordance with the practice and principles of the Church of Christ, Scientist.
Section 10

Administration

10.1 Administrator required. There shall be an on-site administrator who shall perform such duties as the licensee may properly delegate to him/her. The administrator shall perform such functions in compliance with all applicable laws and regulations and consistent with the standard of conduct that a reasonable and prudent person would observe in the same situation. [Class III]

10.2 Administrator's age. The administrator shall be at least twenty-one (21) years of age. [Class III]

10.3 Qualifications of the applicant/licensee and administrator. The applicant/licensee and administrator must meet the following requirements:

10.3.1 The applicant/licensee and administrator must demonstrate to the Department’s satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. The applicant/licensee and administrator, as part of the license application and renewal process, shall consent to the release of all information that may be reviewed in this Section. In making any determination under this Section, the Department may consider:

10.3.1.1 Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the applicant/licensee and administrator;

10.3.1.2 Whether the facility is required to have a licensed administrator by the Nursing Home Administrator’s Licensing Board, and whether the administrator’s license is current and valid;

10.3.1.3 Financial ability and fiscal responsibility of the applicant/licensee (such as a history of timely payment of employee Federal withholding taxes, and capability of obtaining financing for working capital and repairs);

10.3.1.4 Management and supervisory experience, including the capacity to manage the financial operations and staff of the facility for which the license is sought. A Residential Care or Multi-Level Facility Administrator’s License will be accepted as evidence that this standard is met;

10.3.1.5 Experience in the field of health care, social services or areas related to the provision of assisted living services. A Residential Care or Multi-Level Facility Administrator’s License will be accepted as evidence that this standard is met;
10.3.1.6 Understanding of and compliance with resident rights;

10.3.1.7 Any information reasonably related to the ability to provide safe and compassionate services.

10.4 **Administrator training.** The administrator must have successfully completed a Department-approved training program for administrators unless they have a license from the Nursing Home Administrators Licensing Board as a Residential Care Administrator or Multi-Level Facility Administrator. On-going training of at least twelve (12) classroom hours annually is required for all administrators in areas related to care of the population served by the facility. Classroom hours from the Department-approved administrator training may count towards meeting these twelve (12) hours.

10.5 **Acting administrator.** A competent individual, authorized to act in the absence of the administrator during the normal working day, shall be designated. Any planned absence of the administrator for a period longer than thirty (30) calendar days shall be reported in writing to the Department, including the name of the acting administrator.

10.6 **Change of administrator.** In the event of a change of administrator, the licensee must notify the Department in writing within seventy-two (72) hours and submit a change of administrator application with the name of the new administrator within thirty (30) calendar days of hire. The facility may have an acting administrator for a period not to exceed sixty (60) calendar days. If no permanent administrator has been secured and no new application is submitted by the end of the sixty (60) calendar day period an extension of the time must be requested by the licensee in writing, and the request must be approved by the Department. No extension will be granted unless the licensee demonstrates that a reasonable attempt has been made to find a replacement meeting the requirements of in accordance with Section 10.3 of these regulations. If the Department does not grant an extension, the licensee shall be notified of the opportunity to request an administrative hearing pursuant to Title 5 M.R.S.A. §9051 et seq.

10.7 **Physical and emotional health of administrator.** The administrator shall possess physical health, mental health and the good judgment determined necessary by the Department to capably operate the facility and supervise residents. An administrator with a documented history or substantiated complaints of substance abuse or mental illness must provide evidence of satisfactory treatment/rehabilitation or references regarding current condition. An examination may be required at the discretion of the Department. Failure to disclose the above information may be grounds to deny an (re)application. *[Class III]*

10.8 **Number of hours for administration.** Hours spent for administration shall include those hours spent on-site at the facility performing administrative duties and those off-site hours spent conducting activities specifically related to the administration of the facility, but shall not include so-called "on-call" hours. In no event shall an administrator fulfill the requirements for administrative hours solely with off-site hours. The number of hours that an administrator shall perform administrative duties each week shall be as follows:
10.8.1 At least forty (40) hours each week during normal business hours is required for any facility having fifty (50) or more beds. If a person administers more than one (1) facility with a combined total of fifty (50) or more beds, there shall be a distribution of forty (40) hours between the facilities. In the case of one administrator having responsibilities in more than one facility, the Department may limit the number of beds for which that administrator can be responsible. Such limitations may be set when the allocation of hours is not sufficient to comply with all applicable laws and regulations.

10.8.2 Facilities or a combination of facilities having less than fifty (50) beds are permitted to have less than forty (40) hours of on-site administration per week. The Department may require up to forty (40) hours of on-site administration in a facility or combination of facilities of 20-49 beds and up to twenty (20) hours in facilities of 5-19 beds when there is evidence that less hours are not sufficient to fully comply with all applicable laws and regulations. Administrative hours shall be indicated on the time schedule, as required by Section 13.3.4 of these regulations, except in facilities of ten (10) or fewer beds.

10.8.3 When an administrator is shared with another facility, prior approval by the Department is required and will be granted subject to conditions in Sections 10.8.1 and 10.8.2 of these regulations.

10.9 Administrative responsibilities. The administrator is responsible for the overall operation of the facility. Notwithstanding Section 10.1, the administrator shall perform the following duties:

10.9.1 Ensure that all staff are qualified and competent and are performing their duties consistent with all regulations and provisions of law.

10.9.2 Assure that each resident’s abilities and needs are adequately assessed, that a pertinent service plan based upon assessment is developed and that each resident is offered all services as indicated in the service plan.

10.9.3 Make work assignments according to the qualifications of staff and the number and needs of the residents.

10.9.4 Develop, maintain and carry out written policies and procedures to implement these regulations. Other policies may be developed at the discretion of the facility to ensure the orderly conduct of resident care. Policies shall indicate what staff are responsible for coordination or implementation of policies and procedures. Required policies include:

10.9.4.1 Resident care;

10.9.4.2 Resident grievance procedures;
10.9.3 Personnel (including hiring procedures, reference checks, job qualifications and descriptions, lines of authority, employee benefits, work rules, evaluation of performance of tasks as described in the job description and disciplinary procedures);

10.9.4 Dietary;

10.9.5 Medications (administration, ordering, returning, discontinuing, destroying, charting, pharmacy consultation);

10.9.6 Fire and emergency procedures;

10.9.7 Maintenance/service agreements and schedules;

10.9.8 Admission/discharge and scope of services policy;

10.9.9 Confidentiality;

10.9.10 Activities/Social Services;

10.9.11 Staff training and development (including orientation and in-service education);

10.9.12 Nursing services;

10.9.13 Refusal of treatment/care/services; and

10.9.14 Emergency medical procedures, including emergency transfers. Written policies and licensing regulations are to be reviewed by and shall be available to all staff members. The facility shall also make available a copy of paragraph 67.02-3 of Chapter III Section 67 of the MaineCare Benefits Manual for limitations on nursing care. These policies are also to be available for review by interested parties.

10.9.5 Provide a safe environment which supports residents’ rights and aging in place.

10.9.6 Develop, maintain and carry out policies and procedures for Quality Assurance planning using, at a minimum, the Quality Indicator reports provided by the Department.

10.9.7 If time studies are required, the Administrator shall be responsible to see they are done in compliance with paragraph 97.07-8 of Chapter II, Section 97, of the MaineCare Benefits Manual.
Section 11

Administrative and Resident Records

11.1 Individual records required. Information pertaining to a resident's stay shall be centralized in an individual record, containing the following, where applicable:

11.1.1 An identification and summary sheet that includes the following information:

11.1.1.1 Name, previous address and Social Security number of resident;
11.1.1.2 Birth date, sex and marital status;
11.1.1.3 Date of admission and source;
11.1.1.4 Religious affiliation;
11.1.1.5 Duly authorized licensed practitioner's name, address and telephone number;
11.1.1.6 Dentist's name, address and telephone number;
11.1.1.7 Name, address and telephone number of the legal guardian/conservator or legal representative;
11.1.1.8 Name, address and telephone number of the person who will make payments for boarding care (if other than the resident);
11.1.1.9 Name, address and telephone number of nearest relative or friend;
11.1.1.10 Name, address and telephone number of person to be notified in an emergency;
11.1.1.11 Day program name, telephone number, address and contact person, if applicable;
11.1.1.12 Current diagnoses and/or physical or mental disabilities and instructions as to any special care required;
11.1.1.13 Language spoken/communication method;
11.1.1.14 Discharge date, destination and reason for discharge;
11.1.1.15 Record of death, if death occurs in the facility, including:
   11.1.1.15.1 Date and time of death;
   11.1.1.15.2 Immediate cause of death;
11.1.1.16 Name, address and telephone number of the person to be notified and the procedures to be followed in an emergency to cover the immediate care of the resident and disposition of the body at the time of death.
11.1.2 A listing of all personal property of significant value to the resident that includes such things as jewelry, radios, television sets, dentures, appliances and other valuables. Where serial numbers are available, these shall be included as part of the record. The record shall be signed and dated by the resident or his/her legal representative. When significant items of personal property are brought into or removed from the facility, it shall be so noted in the record. It shall be noted in the record if a resident has no personal property of significant value.

11.1.3 A record or statement from the duly authorized licensed practitioner showing the date of the resident’s last annual physical examination and any pertinent information on the resident's diagnosis, physical condition and medical history. If a resident has had a physical examination within one (1) year of the date of admission, a copy of the report shall be obtained and placed in the resident's record. A complete physical must be scheduled upon admission if no physical exam has been done in the past year.

11.1.4 Written and dated orders signed by a duly authorized licensed practitioner for all treatments, medications and special diets.

11.1.5 Individual medication records, kept in accordance with Section 7.12 of these regulations.

11.1.6 Other information including:

11.1.6.1 Diabetic record, if applicable;

11.1.6.2 Illnesses;

11.1.6.3 Copies of incident or accident reports in accordance with Section 11.1.7;

11.1.6.4 Visits to or by the duly authorized licensed practitioner or other health professional (e.g., dentist or audiologist);

11.1.6.5 Documentation at least monthly of observed changes in the resident's condition or behavior, progress in reaching service plan goals or other information needed to properly assess and evaluate the resident in accordance with Section 12.2 of these regulations;

11.1.6.6 Assessment and residential service plan;

11.1.6.7 Denture identification number;

11.1.6.8 Social service record;

11.1.6.9 Contract;
11.1.6.10 Documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, if such a relationship exists; and

11.1.7 Incident reports. An incident report shall be completed for any resident who has sustained or caused a fall, injury or accident in the facility, while being transported by the facility, or in an activity supervised by facility staff, who unsafely wanders from the facility, who is involved in an altercation with another resident, who has a medication reaction, or when an error is made in the documentation or administration of medication. The report shall describe the incident and indicate the extent of the injury or reaction and necessary treatment. The dispensing pharmacy shall be consulted regarding incidents involving medications, in order to assist in assessing adverse drug reaction, drug-drug interaction, drug-food interaction and allergies/sensitivities. If, in the opinion of the administrator or person in charge, the incident is not serious enough to call an examining duly authorized licensed practitioner, an incident report shall still be recorded in the resident's record. The administrator shall initial the record within seventy-two (72) hours. If examination and treatment by a duly authorized licensed practitioner is necessary as a result of an incident, the facility shall notify the guardian or conservator as soon as possible, within seventy-two (72) hours.

11.1.8 Refusal of care or treatment. The resident’s record shall contain documentation when a resident refuses to consent to care or treatment which the facility is required to provide in accordance with the standards for resident care (Section 12) or as prescribed by a duly authorized licensed practitioner.

11.1.9 Referral/transfer form. A referral or transfer form shall be prepared when any resident is transferred from one facility to another facility, institution or agency or to another level of care within the same facility. A copy shall be kept in the resident's record at both facilities. The referral or transfer form shall contain a summary of information about the admitted/discharged resident to ensure continuity of care, including a copy of the most recent history, physical examination report, duly authorized licensed practitioner's orders and a copy of the resident's most recent assessment and service plan. [Class III]

11.1.10 Computerized records. Records may be computerized, so long as appropriate staff are adequately trained in accessing, reading and maintaining these records and the records are readily accessible and available to all appropriate staff.

11.2 Admission/discharge log. All admissions and discharges shall be recorded in a bound book, indicating the residents’ names and dates of admission and discharge.
11.3 **Daily census.** A daily census shall be recorded and kept in the facility. In facilities with ten (10) or fewer beds, the census may be kept by omission, that is, kept as a record of resident absences from the facility and may be kept individually in each resident's record.

11.4 **Personal funds.**

11.4.1 **Permission to management personal funds of residents.** No provider or agent of a provider shall manage, hold or deposit in a financial institution the personal funds of any resident of the facility, unless written permission is received therefore from:

11.4.1.1 The resident, if the resident has no legal representative;

11.4.1.2 The resident’s legal representative, if such person exists and can be reached; or

11.4.1.3 The Department, if a legal representative exists, but cannot be reached.

11.4.2 **Itemized accounting.** Any operator or agent who, after receiving written permission pursuant to Section 11.4.1, manages or holds the personal funds of any resident, shall maintain an up-to-date, accurate account for these funds, which shall include for each resident, a separate, itemized accounting for the use of the resident’s personal funds, with supporting documentation for every expenditure in excess of two dollars ($2.00). It shall be provided to the resident on a quarterly basis for their review.

11.4.3 **Depositing personal funds.** The Department may require the facility to deposit in a financial institution the personal funds of a resident if the resident has a legal representative who cannot be reached.
Section 12

Standards for Resident Care

12.1 **General rule.** Residents shall have the opportunity to receive individualized services that help them age in place, function optimally in the facility and in the community, engage in constructive activity, and manage their health conditions. The facility will assure, to a practicable extent, that residents’ needs will be accommodated regarding individual choices and preferences. This shall be evidenced in the assessment of individual needs, development and implementation of individual service plans and in regular progress notes.

12.2 **Resident assessment.** Residents shall be assessed within thirty (30) calendar days of admission and reassessed annually or if there is a significant change in a resident’s condition, using the state approved Resident Assessment Instrument (RAI) or other assessment or assessment process as required by the agency providing the MaineCare funds, to determine their abilities and need for services. The resident and resident's legal representative, as well as staff or other persons approved by the resident or resident’s legal representative who are knowledgeable about the resident, shall participate in or be consulted concerning the assessment. The areas identified below are to be assessed. The listing of these areas is not meant to exclude assessment of any other obvious needs which the residents may exhibit.

12.2.1 Ability and need for psychological or supportive services, as may be evidenced by his/her adjustment to the facility, social and emotional issues, communications/relations with others, behaviors, compatibility with staff and other residents, or adapting/controlling personal habits;

12.2.2 Ability and need to maintain or develop family and community ties;

12.2.3 Need for educational, religious or community vocational services;

12.2.4 Ability and need for assistance with legal or financial problems;

12.2.5 Ability and need for assistance with personal care or ADLs as defined in Section 2 of these regulations;

12.2.6 Ability to manage personal affairs, use the telephone, handle finances, read and write correspondence, express likes and dislikes and register to vote;

12.2.7 Ability and need regarding social, recreational and leisure time activities, specifying likes and dislikes;

12.2.8 Abilities and needs regarding hearing, vision, speech, communication, mobility and memory impairments and use of related adaptive equipment;
12.2.9 Ability and need for assistance with securing necessary health care, including medical, nursing, dental, day treatment, psychological or mental health services, qualified sign language interpreters and other communication assistance;

12.2.10 Ability and need for arranging transportation to meet medical, social and business needs;

12.2.11 Ability and need for assistance to be independent in the community;

12.2.12 Ability and need for assistance regarding administration of medications;

12.2.13 Need for discharge planning.

12.3 Service plan. A service plan shall be developed and implemented within thirty (30) calendar days of admission for each resident based upon the findings of the resident assessment instrument (RAI). The plan shall address those areas in which the resident needs encouragement, assistance or an intervention strategy. The resident, his/her legal representative (if applicable) and others chosen by the resident shall be actively involved in the development of the service plan, unless he/she is unable or unwilling to participate. There shall be documentation in the resident’s record identifying who participated in the development of the service plan. The service plan shall describe strategies and approaches to meet the resident’s needs, names of who will arrange and/or deliver services, when and how often services will be provided and goals to improve or maintain the resident’s level of functioning. Residents shall be encouraged to be as independent as possible in their functioning, including ADLs and IADL’s if they choose, unless contraindicated by the resident's duly authorized licensed practitioner. The service plan shall be modified, as necessary, based upon identified changes. Residents shall never be required to perform activities specified in the residential service plan or any other activities and cannot be used to replace paid staff.

12.4 Progress notes. The facility shall maintain ongoing progress notes at least monthly, on implementation of the service plan and for any significant changes in the resident’s life, including any increases or declines in the resident’s physical and mental functioning that should be considered at the time of reassessment or adjustment in the service plan. Progress notes shall begin within twenty-four (24) hours of admission and include an initial summary of basic care needs, circumstances of resident’s placement and resident’s adjustment to the facility.

12.5 Preferred activities. Providers shall make a variety of activities available which are of interest to the residents, in addition to television and movies. Activities shall be oriented to individual resident preferences.

12.6 Planned activity program. In addition to the requirements of Section 12.5, there shall be a planned program for diversional and motivational activities suited to the residents’ needs and interests, as identified under Section 12.2. The program shall consist of a variety of activities designed for both group and individual participation and shall include activities outside the home, during the week and on weekends. Reasonable, accessible transportation to outside activities shall be provided or arranged. In facilities with more than ten (10) beds, an activity schedule shall be posted in resident areas. Where necessary, activities shall be modified to eliminate or reduce barriers to resident participation due to physical or cognitive limitations or language differences, including assisting the resident in learning the skills or knowledge to participate in activities.
12.7 **Residents rising and retiring.** Individual preferences of the residents shall be considered for times of rising and retiring, except as may be provided in the service plan.

12.8 **Reading and recreational materials.** A variety of reading and recreational materials which shall be available to the residents at all times. These shall include at a minimum, a daily newspaper, a variety of current magazines, radio and an operational television set. A facility's obligation to provide these materials is not waived when residents have their own.

12.9 **Resident instruction in evacuation procedures.** Residents and staff shall participate in regularly scheduled fire drills. This shall include instructions or action to be taken when the primary escape route is blocked. There shall be posted evacuation plans clearly showing the location of all exits. Fire and emergency policies and procedures, required pursuant to Section 10.9.4.6, shall contain procedures for the protection of all persons in the event of fire and for their remaining in place, for their evacuation to areas of refuge and from the building when necessary. These policies shall include special staff actions, including fire protection procedures needed to ensure the safety of any resident, and shall be amended or revised upon admission to the home of any resident with special needs. [Class II]

12.10 **Medical and health care.** The facility is responsible for promptly coordinating and assisting in accessing appropriate services for residents. The health care of every resident shall be under the supervision of a duly authorized licensed practitioner. Each resident shall have an annual physical, unless otherwise specified by the licensed medical professional.

12.11 **Residents with communicable diseases.** The facility shall not admit residents with a communicable disease if that resident's condition or behavior endangers the health and welfare of other residents and if no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.

12.12 **Employees with communicable diseases.** No facility shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease which would threaten the health and welfare of the residents unless Standard Precautions reduce or eliminate exposure or risk to the residents.

12.13 **Transportation.** The facility shall provide or arrange transportation to medical and other appointments. Other transportation to meet residents’ recreational, social and business needs of a reasonable nature will also be provided or arranged by the facility. This does not apply to transportation which is necessary to be provided by ambulance.

12.14 **Refusal of care or treatment.** In the event that a resident refuses necessary care or treatment, the facility shall document reasonable efforts made to consult with the resident's licensed medical professional, the registered nurse consultant, caseworker or other appropriate individuals in order to ensure that residents receive necessary services. However, in no case shall a person who does not have legal authority to do so, order treatment that has not been consented to by a competent resident. [Class III]
12.15 **Discharge summary.** Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall be inclusive of, but not limited to the following:

12.15.1 Reason for discharge;

12.15.2 Targeted living arrangement;

12.15.3 Identification and coordination of skills and supports and steps necessary for discharge to occur.
Section 13

Staffing

13.1 General requirements. Minimum staffing shall be adequate to implement service plans, as well as to provide a safe setting. The Department reserves the right to require additional personnel or to modify the requirements of this section due to the level of supervision and care required by the residents, the size of the facility, and distinct parts or distribution of residents throughout the physical plant. The department may consider the Quality Indicator report in an analysis of the adequacy of staffing. It is further required that all regular staff have in-service training at least annually, in areas related to the specific needs of the residents served.

13.2 Staff requirements in facilities with ten (10) or fewer beds.

13.2.1 Facilities with ten (10) or fewer beds are required to have, at a minimum, one (1) responsible adult who is at least eighteen (18) years of age, present at all times whenever residents are present, to perform resident care and provide supervision of residents. This person shall possess the good health and judgment determined necessary by the Department to carry out assigned duties. The Department may require an examination and submission of a written report from a duly authorized licensed practitioner or psychologist licensed to practice in Maine.

13.2.2 The name, address and telephone number of all persons, other than the owner or administrator, who provide care and supervision of residents shall be available to the Department upon request.

13.3 Minimum requirements for more than ten (10) beds.

13.3.1 There shall be at least two (2) responsible adults awake, on duty and readily available at all times, able to act effectively in the event of an emergency, except as provided in Section 13.3.2. If less than two (2) resident care staff are required by Section 13.4, a staff person serving in another capacity may be considered as the second person as long as the on-duty requirement is fulfilled.

13.3.1 For purposes of Section 13.3.1, resident care includes the functions of direct resident care and supervision, activities, housekeeping, laundry and social services. It excludes administration, maintenance and dietary service. If persons performing these functions also perform resident care, the hours assigned to each function shall be shown on the weekly time schedule. The Department may allow direct dietary time to be included in resident care ratios when residents are involved in food preparation and serving as part of a service plan and are supervised by staff. Approval shall be requested by the facility in writing. Resident care staff may assist in setting tables, serving meals and clearing the dining tables.
13.3.2 Only persons who are eighteen (18) years of age or older, except for a CNA who is sixteen (16) or older, shall perform resident care duties, and be counted toward staffing requirements for resident care.

13.3.3 The Department has the right to require that one (1) or more staff members receive training or be retrained when necessary, to correct or prevent any violation of these regulations.

13.3.4 Weekly time schedules shall be posted and shall include each employee’s name, job function/title, hours of work and days of each week. All employees, including the administrator, must be listed on the time schedule. When an employee has more than one function, the breakdown of hours shall be noted. Time schedules shall reflect the actual days/hours worked by all employees in the time period of the schedule and shall be made available to the Department's authorized representatives.

13.4 Minimum resident care staff to occupied bed ratios. A minimum resident care staff to occupied bed ratio shall be maintained at all times. In facilities with more than ten (10) beds, the ratio shall be 1:12 from seven a.m. to three p.m. (7:00 a.m. to 3:00 p.m.), 1:18 from three p.m. to eleven p.m. (3:00 p.m. to 11:00 p.m.) and 1:30 from eleven p.m. to seven a.m. (11:00 p.m. to 7:00 a.m.). For facilities of ten (10) or fewer beds, reference is made to Section 13.2.

13.5 Employee records. Facilities must maintain individual records on all related and unrelated employees. Records shall contain the initial date of employment, date of birth, home address and telephone number, experience and qualifications, social security number, copy of current occupational license (if applicable), references and reference check information, job description, record of participation in in-service, orientation or other training programs, results of annual personnel evaluations, disciplinary actions, illness and injury records and date of and reason for termination. Records may be computerized.

13.6 Staff training, education and qualifications.

13.6.1 Within one hundred twenty (120) days of hiring, all staff, other than CNA’s and licensed professional staff whose job responsibilities include direct service to residents for at least twenty (20) hours per week, shall successfully complete a certification course approved by the Department.

13.6.2 Additional training specific to a facility’s programs may be identified and required by the Department for any staff.

13.6.3 Any person working in the facility who is not a resident must demonstrate the following:

13.6.3.1 Conduct which demonstrates an understanding of, and compliance with, residents' rights;
13.6.3.2 The ability and willingness to comply with all applicable laws and regulations;
13.6.3.3 The ability to provide safe and compassionate services; and
13.6.3.4 A history of honest and lawful conduct.

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

13.8 **Nursing services.** Nursing services may be provided directly by, or under the supervision of, registered nurses or licensed practical nurses employed by the facility or by contract with home health agencies or other persons permitted by law to provide nursing care, subject to the limitations in Section 9.2. Delegation of nursing care must be in accordance with the Nurse Practice Act. [Class III]

13.9 **Registered nurse services.** Each facility shall retain a registered nurse, either on staff (other than the Administrator) or on a contractual basis, to provide the following services:

13.9.1 Observe residents’ signs and symptoms;
13.9.2 Review resident records for completeness and accuracy;
13.9.3 Review medication records;
13.9.4 Review medication administration practices and procedures;
13.9.5 Review therapeutic diets;
13.9.6 Recommend staff training; and
13.9.7 Undertake other reviews or make other recommendations as necessary.

These services will be provided on the following timetable:

For facilities licensed for 7-10 residents - a minimum of quarterly
For facilities licensed for 11-25 residents - a minimum of every sixty (60) calendar days
For facilities licensed for 26-40 residents - a minimum of monthly
For facilities licensed over 40 residents - a minimum of weekly

When the R.N. is not on staff (e.g., hired on a contractual basis) a written report with specific recommendations in each area shall be provided to the administrator within one (1) month.

13.10 **Pharmacist consultant services.** Each facility of more than ten (10) beds shall retain the services of a pharmacist consultant no less than quarterly to:
13.10.1 Review written policies and procedures for pharmaceutical services;

13.10.2 Review medication areas for labeling, storage, temperature, expired medications, locked compartment, access to keys and availability and completeness of a first aid kit;

13.10.3 Review to ensure that only approved drugs and biologicals are used in the facility;

13.10.4 Review medication records and initial and date the records when reviewed;

13.10.5 Review adherence to stop orders; and

13.10.6 Review staff performance in carrying out pharmaceutical policies and procedures.

The pharmacist consultant shall provide the administrator with a timely written report of findings, with specific recommendations in each of the areas reviewed.

13.11 Qualified consultant dietitian. The Department reserves the right to require the facility to obtain the services of a qualified consultant dietitian in the event that serious or multiple deficiencies in dietary service are noted.
Section 14

Dietary Services

14.1 Dietary coordinator. The facility shall have a dietary coordinator who has experience and/or training in food service suitable to the size of the facility. Experience and/or training may include on-the-job training. This individual shall have the ability to coordinate and manage the food services in the facility. This includes menu planning, food purchasing, food storage, preparation and serving. The dietary coordinator shall demonstrate knowledge of minimum daily food requirements, how to use dietary reference or other resource materials to meet daily and therapeutic nutritional needs and how to measure portions for therapeutic diets.

14.2 Adequacy of diets. The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

14.3 Planned menus. Menus shall be planned in accordance with resident needs and preferences. A variety of foods and fresh fruits and vegetables in season shall be offered.

14.4 Menus posted and filed. Menus shall be posted conspicuously in the food service area and in an area used frequently by residents during the week used, and shall be kept on file for three (3) months. The posted menu shall be in large enough print for all residents to be able to read easily.

14.5 Record of food served, menu changes and substitutions. Changes made in the planned menu shall be recorded daily in the facility and shall be consistent with Section 14.2. Substitutions of similar nutritive value shall be offered when menu items have been refused. In facilities with ten (10) or fewer beds, a record of food served may be maintained in lieu of planned menus and shall be kept on file for three (3) months. [Class II]

14.6 Therapeutic diets. Therapeutic diets are considered treatments and shall be ordered in writing by the duly authorized licensed practitioner. Menus for medically prescribed therapeutic diets shall be planned in writing and approved by a qualified consultant dietitian.

14.7 Diet manual. Each facility shall have a current (not more than five [5] years old) therapeutic diet manual that is recommended or approved by a qualified consultant dietitian.

14.8 Food supplies. Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus. [Class I/II]

14.9 Meal schedule. Residents shall be offered at least three (3) meals in a twenty-four (24) hour period. Nourishing between-meal snacks shall be offered. Additional foods and beverages shall be made available twenty-four (24) hours per day.
14.10 **Record of food purchased.** The Department may require that the facility record the type and quantity of food purchased to determine compliance with Section 14.5.

14.11 **Resident participation in meal planning and preparation.** Residents shall be encouraged to participate in food planning. Facility policies may prohibit resident involvement in food preparation and serving if it interferes with food service.

14.12 **Mealtime atmosphere.** The facility shall encourage use of the dining area by residents. Food shall be served at the proper temperatures.
Section 15

Sanitation/Dietary Services

15.1 Common kitchen and areas used to prepare food. Kitchen and areas used to prepare food shall be located away from possible food contamination sources.

15.2 Food service sanitation. Food shall be safe for human consumption. Food shall be obtained from sources that comply with all laws pertaining to food and food labeling. Fresh produce may be purchased at farm stands.

15.3 Food storage. All food shall be stored using safe and sanitary methods. [Class III]

15.3.1 Food shall be stored at least six (6) inches above the floor on clean racks, dollies or other clean surfaces.

15.3.2 Food or containers of food shall not be stored under, or exposed to, unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

15.3.3 Shelving in storage areas, refrigerators and freezers shall be in good condition with cleanable surfaces.

15.3.4 Food not subject to further washing or cooking before serving shall be stored in such a manner as to be protected against contamination from food requiring washing or cooking.

15.4 Equipment and utensils. All kitchenware and equipment used in the preparation, service, display or storage of food shall be maintained in a clean and sanitary manner.

15.4.1 All tableware, kitchenware and utensils shall be stored off the floor in a clean and sanitary manner.

15.4.2 Single service items shall not be reused.

15.4.3 All kitchenware and food contact surfaces of equipment shall be washed, rinsed and sanitized after each use.

15.4.4 Food preparation surfaces shall be in good repair and easily cleaned. They shall be cleaned thoroughly after use.
15.5 **Employee cleanliness.** All employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

15.5.1 No person while affected with any disease in a communicable form or while afflicted with boils, infected wounds, sores, or any acute gastrointestinal or respiratory infection shall work in any area of food service in a capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other individuals. *[Class III]*

15.5.2 All employees shall thoroughly wash their hands and arms with soap and warm water before starting work and as often as may be required to remove soil and contamination and immediately after visiting the toilet room. Employees shall keep fingernails clean. *[Class III]*

15.5.3 Employees shall not use tobacco in any form while engaged in food preparation or service or while in equipment and utensil washing or food preparation areas.

15.6 **Milk and milk products.**

15.6.1 Only pasteurized milk and milk products shall be used. *[Class III]*

15.6.2 Milk served for drinking shall be served in the original container received from the dairy or poured directly into the resident's glass at mealtime. Approved bulk dispensers may be used. *[Class III]*

15.6.3 No reconstituted powdered milk or evaporated milk shall be served for drinking. Dry or evaporated milk shall only be used for cooking.

15.7 **Eggs.** Eggs and egg products permitted include:

15.7.1 Clean, whole eggs, with shell intact, without cracks or checks;

15.7.2 Pasteurized liquid, frozen or dry eggs or pasteurized dry egg products;

15.7.3 Hard-boiled, peeled eggs; and

15.7.4 Commercially prepared and packaged eggs.

15.8 **Shucked shellfish.** Fresh and frozen shucked shellfish (oysters, clams or mussels) shall be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker/packer or repacker and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. *[Class III]*

15.9 **Raw fruits and vegetables.** All raw fruits and vegetables shall be washed thoroughly before being cooked and served. *[Class III]*
15.10 Refrigerated storage.

15.10.1 Potentially hazardous foods requiring refrigeration after preparation shall be rapidly cooled to an external temperature of forty-one degrees (41°) Fahrenheit or below. [Class II]

15.10.2 Frozen food shall be kept frozen and shall be stored at a temperature of zero degrees (0°) Fahrenheit or below. [Class II]

15.10.3 Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head. Ice used for cooling stored food and food containers shall not be used for human consumption.

15.10.4 Sufficient numbers of refrigerators or freezers shall be provided to assure the maintenance of potentially hazardous food at the required temperatures during storage.

15.10.5 Conspicuous, easily readable thermometers shall be provided for each refrigerator and freezer in the facility.

15.10.6 Eggs shall be refrigerated at all times except when being used in cooking and/or being served. [Class II]

15.10.7 A safe temperature for food must be maintained throughout the transport and service of meals.

15.10.8 Perishable, refrigerated and frozen food shall be labeled and dated to determine whether they have proper nutritional value when served and are safe for human consumption.

15.11 Thawing potentially hazardous foods. Potentially hazardous foods shall be thawed as follows:

15.11.1 In refrigerator units at a temperature not to exceed forty-one degrees (41°) Fahrenheit; or [Class II]

15.11.2 Under potable running water at a temperature of seventy degrees (70°) Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; [Class II] or

15.11.3 In a microwave oven, only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire uninterrupted cooking process takes place in the microwave oven; or [Class II]

15.11.4 As part of a continued cooking process. [Class II]
15.12 Cooking potentially hazardous foods.

15.12.1 Poultry, poultry stuffing, stuffed meats and stuffing containing meat shall be cooked to heat all parts of the food to at least one hundred sixty-five degrees (165°) Fahrenheit, with no interruption of the cooking process. [Class I/II]

15.12.2 Pork and any food containing pork shall be cooked to heat all parts of the food to at least one hundred sixty-five degrees (165°) Fahrenheit. [Class I/II]

15.12.3 Rare roast beef and rare beefsteak shall be cooked to an internal temperature of at least one hundred thirty degrees (130°) Fahrenheit, unless otherwise ordered by the immediate consumer. [Class I/II]

15.12.4 Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to one hundred sixty-five degrees (165°) Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. [Class I/II]

15.12.5 All potentially hazardous food shall, except when being prepared, be kept at forty-one degrees (41°) Fahrenheit or below, or one hundred forty degrees (140°) Fahrenheit or above. [Class I/II]

15.12.6 Custards, cream fillings or similar products shall be kept at safe temperatures of forty-one degrees (41°) Fahrenheit or below, except during necessary periods of preparation and service. [Class I/II]

15.12.7 All perishable foods shall be stored at such temperatures as will protect against spoilage. [Class I/II]

15.13 Second-grade products prohibited. Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods are prohibited from use. [Class I/II]

15.14 Manual dishwashing. When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution having a temperature of at least one hundred twenty degrees (120°) Fahrenheit and then shall be rinsed free of such solution. Eating and drinking utensils shall be sanitized by one of the following three methods:

15.14.1 Immersion for at least one-half (1/2) minute in clean hot water at a temperature of at least one hundred seventy degrees (170°) Fahrenheit.

15.14.2 Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and at a temperature of at least seventy-five degrees (75°) Fahrenheit.

15.14.3 Other sanitizing methods may be used upon written approval of the Department.
15.15 Mechanical dishwashing. When mechanical cleaning and sanitizing is used, the following standards shall be met:

15.15.1 The wash-water temperature shall be at least one hundred thirty (130°) Fahrenheit. When hot water is relied upon for sanitization, the final or fresh rinse water shall be at least one hundred eighty degrees (180°) Fahrenheit, unless otherwise stated in the manufacturer's specifications.

15.15.2 When chemicals are relied on for sanitization, they shall be applied in such concentration and for such a period of time as to provide effective bacterial treatment of the equipment and utensils.

15.15.3 Machines (single-tank, stationary rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used, provided that the wash-water is kept clean, chemicals added for sanitization are automatically dispensed and the chemical sanitizing rinse-water temperature is not less than seventy-five degrees (75°) Fahrenheit, nor less than the temperature specified by the machine manufacturers.

15.16 Testing of chemical sanitizers. When chemical sanitizing solutions are used for either manual or mechanical sanitization, an approved test kit shall be used to measure the residual of the sanitizing solution.
Section 16

Sanitation/Physical Plant Requirements

16.1 Facility design. The facility shall be designed, operated and maintained in a manner appropriate to the special needs of the population to be served.

16.2 Passable road. The facility shall be served by a road that is regularly maintained and passable at all times of the year. [Class III]

16.3 Heating systems. There shall be a central heating plant connected to each room or area used by residents or staff by means of a radiator, convector or register. The heating system must be capable of maintaining a temperature of seventy-five degrees (75°) Fahrenheit throughout resident areas of the facility. Alternate types of heating systems may be approved by the Department, if a uniform temperature of seventy-five degrees (75°) Fahrenheit can be maintained. Systems other than electric heating shall have an annual inspection and the heating source shall be tagged as being inspected.

16.4 Temperature. Resident areas of the facility shall be maintained at a temperature of seventy degrees (70°), or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. [Class III]

16.5 Renting space.

16.5.1 The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.

16.5.2 Adult Day Services may be provided in the facility to persons residing outside of the facility, with written approval from the Department to provide such services. The facility must have adequate physical plant and staffing and, if providing Adult Day Services to three or more consumers, must meet the requirements of 3.10.

16.6 General condition of the facility and surrounding premises.

16.6.1 The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.

16.6.2 The administrator shall take immediate steps to correct any condition in the physical facility or on the premises, which poses a danger to a resident’s life, health or safety. [Class II, III]
16.7 Toilets and bathing facilities.

16.7.3 In existing facilities, a bathroom equipped with flush toilets and hand-washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available. Users include residents, as well as staff on duty. Facilities shall have adequate toilet facilities for staff and visitors separate from those toilets in private resident rooms. There shall be a mirror over each sink. All facilities are required to have hard-wired, wireless or battery-operated call bell systems in bathrooms, unless the bathroom is designated for non-resident use.

16.7.4 In new construction projects licensed on or after July 1, 2003, there shall a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) residents. There shall be at least one (1) dedicated staff bathroom. There shall also be public bathrooms at a ratio of:

16.7.4.1 1-25 residents – one public bathroom
16.7.4.2 26-50 residents – two public bathrooms
16.7.4.3 51-75 residents – three public bathrooms
16.7.4.4 76-100 residents – four public bathrooms
16.7.4.5 101-125 residents – five public bathrooms
16.7.4.6 126-150 residents – six public bathrooms

There shall be a mirror over each sink. All facilities are required to have hard-wired, wireless or battery-operated call bell systems in bathrooms, unless the bathroom is designated for non-resident use.

16.7.3 An adequate supply of hand-cleansing soap or detergent shall be available at each lavatory. An adequate supply of paper towels or an approved hand-drying device shall be available and conveniently located near the lavatory. Common towels and drinking cups are prohibited. This section does not apply to lavatories in private resident rooms with private baths. [Class III]

16.7.4 Flush toilets shall be located indoors and be in good repair, ventilated to the outside and maintained in a sanitary condition. [Class III]

16.7.5 Commodes, urinals and bedpans used in resident bedrooms shall be clean and sanitary.

16.7.6 In order to accommodate resident privacy, doors or stalls shall have locks.

16.7.7 For facilities initially licensed prior to May 30, 2002, there shall be bathing facilities at a ratio of one (1) per fifteen (15) users. For facilities initially licensed on or after May 30, 2002, there shall be bathing facilities at a ratio of one (1) per ten (10) users. All facilities are required to have at least one (1) bathtub and one (1) shower.
16.7.8 Facilities initially licensed after May 29, 1998, shall have at least one (1) tub or shower for each floor that has resident bedrooms.

16.7.9 Knock lights and visual alarms shall be installed in bathrooms when there is a deaf or severely hard of hearing resident or staff member.

16.7.10 All bathing facilities shall be equipped with grab bars that meet the Americans with Disabilities Act standards. All bathing facilities are required to have hard-wired, wireless or battery-operated call bell systems. Bathing facilities shall afford safety and privacy and shall be maintained in a sanitary condition. Facilities initially licensed after July 1, 2003, shall have a toilet and hand-washing sink in each bathing facility.

16.7.11 For all facilities initially licensed on or after May 30, 2002, there shall be at least one (1) bathroom that includes, at a minimum, a toilet and hand-washing sink on each floor that has resident bedrooms.

16.8 **Handrails.** Inside and outside stairs and ramps used by residents shall be equipped with handrails and have Life Safety Code compliant guards on each side. [Class III]

16.9 **Telephone available.** There shall be a telephone with a listed number available and located in an area designated for residents that provides maximum privacy. For facilities with ten (10) residents or more, a telephone line dedicated for residents’ use, separate from the facility’s business telephone, must be provided. All local calls shall be free of charge to the resident.

16.10 **Water temperatures.** Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. [Class III]

16.11 **Living and dining areas.** The facility shall provide a distinct living area and a distinct dining area, with comfortable furnishings appropriate to the use of the room(s). No folding chairs or patio furniture shall be used. These areas shall be well lighted and free of hazards. Living and dining areas shall have window space at a minimum equal to one tenth (1/10) of the floor space.

16.12 **Resident rooms.** The following standards shall apply to resident rooms:

16.12.1 A minimum of one hundred (100) square feet of usable floor space per person shall be provided in a bedroom designed for single occupancy;

16.12.2 A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms;

16.12.3 Usable floor space shall be calculated only for that floor space having a ceiling height of at least six (6) feet, except for the criterion described in Section 16.12.4. Corridors, passageways, vestibules, kitchenettes, closets and alcoves shall be excluded from the calculations of usable floor space. In a unit with a kitchenette, a minimum of thirty (30) square feet shall be deducted for kitchenette space;
16.12.4 Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) can be counted toward usable floor space for the room;

16.12.5 Each resident bedroom shall have a solid door which can be closed. A visual alerting system, such as a knock light or exterior light switch, shall be installed at the bedroom door for any resident who is deaf or severely hard of hearing;

16.12.6 Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum floor space required by Sections 16.12.1 and 16.12.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. All bedrooms must have at least one (1) window in each room that can be opened. In resident rooms with air conditioners, one window must be openable if an egress window is required;

16.12.7 Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident's bedroom. No resident room shall be used for access to other rooms or corridors; [Class III]

16.12.8 Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing;

16.12.9 Each resident shall be offered a bed and mattress at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds are not acceptable;

16.12.10 Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected;

16.12.11 For each bed there shall be offered:

16.12.11.1 A minimum of two (2) dresser drawers;
16.12.11.2 A comfortable non-folding chair in good repair;
16.12.11.3 A bedside table; and
16.12.11.4 A reading lamp.

16.12.12.1 The facility shall permit and encourage residents to use their own furnishings, space permitting;
16.12.13 For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair;

16.12.14 In facilities offering apartment-style or efficiency units, each such unit shall have an "ABC" fire extinguisher readily available. There shall be no portable hot plates;

16.12.15 Kitchen and food preparation areas in apartments shall be located away from possible food contamination sources;

16.12.16 There shall be no more than two (2) beds per room.

16.13 **Laundry room.** The laundry room shall not be located in an area used to prepare or serve food. The room shall be maintained in a sanitary manner and kept in good repair. The facility shall ensure that linen and clothing are regularly laundered and are handled using proper sanitary techniques. Soiled and clean laundry shall be collected, transported and stored separately. Soiled laundry shall not be carried through food preparation areas unless enclosed in laundry bags. Dryers shall be vented to the exterior of the building.

16.14 **Smoking area.** Facilities which permit smoking must have a self-contained, adequately ventilated smoking area that is accessible to residents. *[Class III]*

16.15 **Towel, linen and bedding supplies.** The facility shall have adequate towel, linen, and bedding supplies in addition to those in use, so that a complete linen change is available in the facility at all times.

16.16 **Outside railings.** Open porches and verandahs shall have railings that meet the Americans with Disabilities Act and Office of the State Fire Marshal guidelines. *[Class II/III]*

16.17 **Lighting.** All areas of the facility shall have sufficient illumination. Candles, courtesy oil lanterns and other open-flame methods of illumination are prohibited. *[Class III]*

16.18 **Requirements for provision of respite care.** Respite or emergency care shall only be provided in beds licensed by the Department.

16.19 **Other standards.** Facilities shall comply with all applicable local, state and federal rules and regulations regarding building safety, fire safety, handicap accessibility and fair housing practices.

16.20 **Local regulations.** Any local regulations which affect the life safety requirements that are more stringent than those referred to in these rules, shall take precedence.

16.21 **Safety requirements:**

16.21.1 Portable space heating devices are prohibited. *[Class III]*

16.21.2 Extension cords are prohibited unless equipped with a fuse mechanism.
16.21.3 Fireplaces may be installed and used only in areas other than resident sleeping areas and must comply with Standards for Chimneys, Fireplaces and Vents (NFPA 211). In addition, fireplaces shall be equipped with heat-tempered glass or other approved material, or fireplace enclosure guaranteed against breakage up to six hundred fifty degrees (650°) Fahrenheit. If, in the opinion of the Office of the State Fire Marshal, special hazards are present, a lock on the enclosure and/or other safety precautions may be required.  [Class III]

16.21.4 Freestanding solid fuel burning stoves located in areas accessible to residents shall be surrounded by a non-combustible railing to prevent residents from coming in contact with the stove. This will not pertain to kitchen stoves primarily used for cooking instead of heating. This regulation does not require that the railing be of such construction as to prevent injury when excessive force is applied to it, but rather to prevent residents from coming into casual contact with the stove. If the stove has a protective covering which will not cause burns on contact, a protective railing is not required.  [Class III]

16.21.5 Each facility shall develop a fire safety plan in conjunction with, and approved by, local or state fire authorities.  [Class III]

16.21.6 A plan noting emergency steps to be taken, evacuation procedures, telephone numbers of police, fire, ambulance, duly authorized licensed practitioners and other individuals deemed necessary shall be posted conspicuously in the home.  [Class III]

16.21.7 Timed drills, as described in the applicable chapters of the National Fire Protection Association Life Safety Code, must be used to determine a residential care facility or private non-medical institution’s capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the National Fire Protection Association Life Safety Code 101A or when timed drills are not required pursuant to the Life Safety Code. When a new resident has participated in a timed drill in another residential care facility or private non-medical institution within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident’s new facility for a period of up to 4 months.

A record shall be kept on a form provided by the Department showing the date and time of each drill. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures.  [Class II]
16.21.8 If, for any reason, the residents are evacuated from the facility other than a planned fire drill, the administrator or a facility representative shall notify the Department at 1-800-383-2441 and the Office the State Fire Marshal immediately after residents are safely evacuated.

16.21.9 Smoke detectors shall be functional at all times. [Class I]

16.22 Water supply. The water supply shall be adequate, of a safe and sanitary quality and from a source, which meets applicable State and local laws and regulations. The following standards shall apply: [Class III]

16.22.1 Water not piped directly from its source shall be transported, handled, sorted and dispensed in a sanitary manner.

16.22.2 Adequate supplies of hot and cold water shall be provided at all hand washing facilities and where equipment and utensils are washed, unless otherwise approved in writing by the Department.

16.22.3 Water supply systems shall be reviewed and approved according to Chapter 231, Drinking Water Rules, adopted by the Department.

16.22.4 The source of all water supplies must be protected from pollution and treated in a manner approved by the Department.

16.22.5 A private water supply shall be tested annually and a satisfactory result must be obtained.

16.23 Sewage disposal.

16.23.1 All water-carried sewage shall be disposed of by means of a public sewerage system or an approved sewage disposal system which is constructed and operated in conformance with applicable State and local laws, ordinances and regulations. [Class III]

16.23.2 Non-water-carried sewage disposal facilities shall not be used, except where water-carried disposal methods have been determined by the Department to be impractical. Under such conditions, only facilities which have been approved by the Department shall be used and operation shall be in conformance with applicable State and local laws, ordinances and regulations.

16.24 Plumbing. All plumbing shall be maintained and comply with applicable state and local plumbing laws, ordinances and rules. [Class III]

16.25 Garbage and rubbish. All refuse collected in common areas or from resident rooms shall be stored in washable, rodent-proof, covered containers pending removal. [Class III]

16.26 Insect and rodent control. There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. All openings to the outer air shall be protected against the entrance of insects by self-closing doors, closed windows, screening or other effective means. Doors and windows used for ventilation must be screened.
16.27 **Poisonous and toxic materials.** When not in use, poisonous and toxic materials such as household cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Household bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification.  *[Class III]*

16.28 **Animals kept as pets.**

16.28.1 Household pets, except fish in aquariums and service animals (e.g., guide dogs), shall not be permitted in common dining areas during meals.  *[Class III]*

16.28.2 No animals, except for service animals (e.g., guide dogs), shall be permitted in common food preparation areas.  *[Class III]*

16.28.3 There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly.  *[Class III]*
Statutory Authority

22 M.R.S.A. Chapters 1663 and 1664
22-A M.R.S.A. §205(2)

Regulatory History

AMENDED
June 1, 2006  [major substantive rulemaking process]

AMENDED:
August 20, 2008 - Sections 3 and 4 [routine technical rules pursuant to Public Law 2007, Chapter 324 (5) (6) (7) (11)] filing 2008-351. Also moved from umbrella-unit number 10-149 to 10-144 at the request of the agency.
APPENDIX A

LICENSED ASSISTED HOUSING PROGRAM
STANDARD CONTRACT

This contract is entered into between _________________________________ (hereinafter “the Provider”) and you, _________________________________.

This contract describes your financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Provider in the course of providing services to you.

This contract is a standard contract required for use in the State of Maine. Providers may add additional provisions to the standard contract in a customized addendum but these additional provisions may not conflict with or replace the use of the standard contract. The intent of having a standard contract in Maine is to permit you to compare costs and services among providers. Providers are required to disclose their contracts and rates.

In consideration of the payment and promises made in this contract, you and the Provider agree as follows:

XIII. STANDARDS

The Provider will help to further your independence and respect your privacy and personal choices, including your choice to continue to reside here for as long as the Provider and program, as it is fundamentally designed, is able to meet your needs. The Provider’s programs will be consumer oriented and meet professional standards of quality at all times.

This means that if your needs exceed the Provider’s ability to provide services, the Provider will assist you in making other arrangements including moving somewhere else, if necessary.

XIV. PROVIDER LICENSE

The Provider is licensed in conformity with the requirements of the State of Maine. The type of provider is stated on the license issued by the Maine
Department of Human Services and posted for public inspection in the __________. This Provider is licensed as follows (check one):

[ ] Level I Residential Care Facility
[ ] Level II Residential Care Facility
[ ] Level III Residential Care Facility
[ ] Level IV Residential Care Facility
[ ] Level I PNMI Residential Care Facility
[ ] Level II PNMI Residential Care Facility
[ ] Level III PNMI Residential Care Facility
[ ] Level IV PNMI Residential Care Facility
[ ] Type I Assisted Living Program
[ ] Type II Assisted Living Program

[ ] This box will be checked if you rent your unit from a separate entity (referred to in this contract as the “Landlord”) that is not the Provider. The Landlord is responsible for enforcing the terms and conditions of the lease. The Provider is responsible for assuring that the terms and conditions of your lease agreement with the Landlord do not conflict with this contract. The State of Maine has reviewed the separate lease agreement and has determined that it complies with all laws and regulations related to the provision of assisted living services. A copy of this lease is attached for reference as Appendix F to this contract. Even though you have a lease with separate landlord, you have the same rights as you would have if the landlord and provider were one and the same.

XV. **APPENDICES**

The following Appendices are attached and made a part of this contract:

[ ] **Appendix A: Admissions Policy**

[ ] Appendix B: Your Rights

[ ] Appendix C: Grievance Policy

[ ] Appendix D: Tenancy Obligations (check if this applies)

[ ] Appendix E: Additional terms in Customized Addendum (check if this applies)
Appendix F: Applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider
XVI. ADMISSION POLICY

There is an Admission Policy that meets the requirements of the State of Maine that describes who can be admitted and the types of services provided. A copy of this policy is attached as Appendix A.

XVII. SERVICES PROVIDED DIRECTLY OR INDIRECTLY BY PROVIDER INCLUDED IN THE DAILY/MONTHLY RATE

A. You agree to purchase:

☐ Housing and Services.
☐ Housing Only.

B. You agree to pay the following current rate to the Provider:

☐ Daily rate of $________
☐ Monthly rate of $________
☐ The amount you pay will be determined by the MaineCare Program.

C. If you rent your unit from a landlord that is a different entity from the Provider, you understand that:

The landlord is ____________________________________________.
The amount of your current monthly rent is __________.

DIV. Certain basic services must be provided in all licensed assisted housing programs. If you have decided to purchase assisted living services, these basic services are provided under the daily/monthly rate you pay for your care. This means the Provider must act in accordance with the regulations to:

25. Observe and assess how you function and/or your individual behaviors for the purpose of enhancing your health and safety or the health and safety of others;
26. Protect you from environmental hazards by mitigating risk in the physical environment to prevent unnecessary injury or accident; and

27. Identify your needs and strengths, develop a service plan and arrange for and monitor service delivery.

E. There is a wide range of services available. Those services and their costs are listed in Appendix E. What you actually receive for services will be based on whether you are purchasing assisted living services, and on your individual assessment and service plan.

If checked below, the service is offered by the Provider as part of your current daily/monthly rate and there is no additional charge to you if it becomes part of your service plan:

37. Personal Supervision.

☐ Even though you may travel independently in the community, the Provider will keep track of your general whereabouts
☐ Staff will accompany you to medical appointments
☐ The Provider provides an escort for regular travel
☐ The Provider has qualified staff in the building 24-hours/day
☐ Other ____________________________________________
☐ Additional provisions: See Appendix E

38. Assistance with activities of daily living. (These are tasks that you may routinely need assistance with in order to maintain your best level of physical function.)

☐ Walking
☐ Changing position in bed
☐ Transferring from place to place
☐ Dressing
☐ Eating
☐ Using the bathroom
☐ Bathing
☐ Personal hygiene, such as help washing your hair
39. Incidental activities of daily living.

- Using the telephone
- Handling your finances
- Banking
- Shopping
- Light housekeeping
- Heavy housekeeping
- Getting to appointments
- Barber/beautician services
- Other ________________________________

Additional Provisions: See Appendix E

40. Medication assistance.

- Obtaining medications from the Pharmacy of your choice:
  ____________________________________________

  - Ordered by Provider
  - Delivered by the Pharmacy
  - Ordered by you/family member
  - Picked up by Provider
  - Picked up by you/family member

- Provide qualified staff to help you take your medications (such as reading the container labels, watching while you take a medication, checking the correct dosage, removing the dosage from the container, administering prescribed dosage, filling a syringe, administering any medication as allowed by applicable licensing regulations)

- Maintaining an individual medication administration record for you that will include all the medications and treatments that your physician orders for you, and a record that includes, for
example, information that they have been administered at the right time and in the right dose

☐ Other ______________________________

☐ Additional Provisions: See Appendix E
41. Food Service.

☐ Meal preparation (including the cost of food) _____ times each day
☐ Meal preparation (food purchased separately by you) ________ times each day
☐ Nutritious between-meal snacks __________ times each day
☐ Special diets ordered by your physician as follows:

______________________________

☐ Shopping for groceries you purchase
☐ Meal planning
☐ Other __________________________
☐ Additional Provisions: See Appendix E

42. Transportation services.

☐ Arranging transportation (cost of transportation included) _______ miles roundtrip
☐ Arranging transportation (cost of transportation not included)
☐ Transportation without escort to medical appointments within ________ miles roundtrip
☐ Transportation with escort to medical appointments within ________ miles roundtrip
☐ Other __________________________________________

43. Nursing services. Some providers provide the services of a registered professional nurse. Others use registered professional nurses to coordinate the services and oversee staff who are not nurses. The following nursing services are part of your daily/monthly rate:

☐ None
☐ Skilled nursing services provided by a registered professional nurse.
☐ Registered professional nurse who oversees staff and coordinates your health care needs.
44. Housing Costs. These costs include those associated with your housing instead of your services, and may include things such as heat, lights, cable TV, telephone, your unit and other costs. Check all that apply:

- All housing costs (there will be no extra charges)
- All housing costs except:

- Semi-private room
- Shared bathroom
- Private room
- Private bathroom
- Efficiency apartment
- One Bedroom Apartment
- Two Bedroom Apartment
- Other
- Additional Provisions: See Appendix E
- You have a lease agreement with a landlord other than the Provider: See Appendix F

45. Equipment and supplies. The Provider will supply the following equipment and supplies, as needed, as part of the daily cost that you pay:

- None
- Non-prescription analgesics and antacids
- Bedroom furnishings:

- Pillows, sheets, linens, towels
- Laundry supplies and equipment
- Laxatives
Thermometers
Non-prescription skin creams/lubricants
Mouthwash
Toothpaste
Other non-prescription ointments: ____________________________
Shampoo
Soap
Facial tissue
Toilet tissue
Paper towels
Incontinence supplies
Other: ___________________________________________________

10. Additional Services

See Appendix E

VI. SERVICES NOT INCLUDED IN THE DAILY RATE.

In some instances you may wish to purchase services beyond those included in your daily rate at an additional charge.

See Appendix E for listing of items that are available at an additional charge.

VII. BILLING AND PAYMENT

A. Payment for services covered by the daily/monthly rate. The Provider requires you to pay for your care under the terms of this contract within the following time frame: _____________________________.

If there is a separate lease agreement, payment must also be made in accordance with that agreement. You should be aware that failure to pay for your services in accordance with this contract may result in your discharge from the Provider’s facility or program. The Provider may not hold you responsible for the payment of attorneys’ fees or any other cost of collecting payment.
B. Source of payment for services covered by the daily/monthly rate:

☐ Self-pay
☐ Self-pay and billing to a third party: ______________

C. Payment for services not covered by the daily/monthly rate. You agree to be responsible for payment for any services or convenience items not specifically included by this contract in the daily/monthly rate. Those that are provided by the Provider will be billed directly to you at the end of each month in addition to the daily/monthly rate.

D. Source of payment for services not covered by the daily/monthly rate:

☐ Self-pay
☐ Other ______________

E. Holding your unit. If you are away temporarily, you are still responsible for paying for your unit and you may return as long as you continue to pay and this contract is in force.

F. Security deposit. A security deposit may be charged only for apartment units in an assisted living program.

☐ There is a security deposit. This security deposit will not exceed one month’s rent (currently $____________), and will be refunded to you within thirty (30) days from date of discharge/death.

☐ The following costs may be deducted from the security deposit:

__________________________________________________________
___
__________________________________________________________
___

☐ Security deposits are part of your separate lease with the Landlord.

G. Calculation of refund. You are entitled to a refund for any advance payments you make on a prorated basis when you are discharged. This will include a refund for the day in which you are discharged.
In residential care facilities, the refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date of discharge.

In assisted living programs, your refund is calculated from the date your apartment unit is vacated or from the last day of any required notice period, whichever is later. The refund is calculated by multiplying the amount you paid per day times the remaining number of days in the month, including the date your unit is vacated or the last day of any required notice period, whichever is later.

**VIII. RIGHTS REGARDING TRANSFER AND DISCHARGE**

You have certain rights under law and regulations regarding transfer and discharge. A copy of a document explaining your rights is attached as Appendix B.
IX. MODIFICATION OF CONTRACT TERMS

At least thirty (30) days written notice is required for any modifications of contract terms including, but not limited to, rate and charge changes, responsibilities, services to be provided or any other items included in this contract. The thirty (30) days notice will not be required if you are the one requesting additional services not already included in the rate you pay pursuant to this contract.

X. NOTICE PROVISION

Any notice required by this contract shall be in writing. The notice shall be considered delivered on the date of its receipt, if hand delivered. If the notice is deposited with the U.S. Postal Service, it shall be considered delivered three (3) days from the date of deposit in the mail. Notice to the Agent shall be by delivering it to him/her at the address provided at the end of this contract.

XI. ACKNOWLEDGEMENT

A. You acknowledge that your rights, attached as Appendix B and included as part of this contract, have been explained to you and you have signed that attachment.

B. You acknowledge that you have been given a copy of the Provider’s admission policy, grievance policy and any tenancy obligations (See Appendix A, C and D).

C. You have made arrangement for the management of your affairs, either personal and/or financial, as follows:

- [ ] Manage own affairs
- [ ] Durable Financial Power of Attorney
- [ ] Health Care Power of Attorney
- [ ] Representative Payee
- [ ] Guardian
- [ ] Conservator
- [ ] Trustee
- [ ] Advance Directive/Living will
- [ ] Other
You agree to supply copies of all relevant information about those individuals who are responsible for your affairs as they relate to your care under this contract.

**XII. CHANGES IN LAW**

Any provision of this contract that is found to be invalid or unenforceable as a result of a change in Federal or State law or regulation will not invalidate the remaining provisions of this contract and it is agreed that, to the extent possible, you and the Provider will continue to fulfill your respective obligations under this contract consistent with law.

**XIII. SIGNATURES**

This contract may not require or encourage any person other than yourself to obligate himself/herself for the payment of your expenses. If any person informs the Provider that he/she wishes to guarantee payment of your expenses, he/she can do so only in a separate written agreement. The separate written agreement allows for the guarantor of payment to change his/her mind within forty-eight (48) hours of signing this separate written agreement.

If someone else who you authorize (hereinafter “your Agent”) signs this contract in his/her capacity as Agent, the individual may or may not be able to make health care or other decisions on your behalf. The extent of the Agent’s authority depends on the nature of that legal relationship.

Seen and agreed by:

Date: ____________________________

Signature of Provider Representative

______________________________

Name of Provider

______________________________

Your Signature or Signature of Your Agent

______________________________

Address
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APPENDIX F

This Appendix applies only if you rent your unit from an entity (the “Landlord”) that is not the Provider.

Y. Your Landlord is: ____________________________.

Z. Your current monthly rent is: ________________.

AA. Among other things, your lease provides that you will receive the following (check all that applies):

- All housing costs (there will be no extra charges)
- All housing costs except:

- ____________________________________________________________________________
- ____________________________________________________________________________
- ____________________________________________________________________________

☐ Semi-private room
☐ Shared bathroom
☐ Private room
☐ Private bathroom
☐ Efficiency apartment
☐ One Bedroom Apartment
☐ Two Bedroom Apartment
☐ Other

D. Your lease is attached here for reference.