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### DEFINITIONS

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The following terms shall have the meanings as specified:

“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.

“Activities Coordinator” means a person with one of the following qualifications:

- a. Completion of a training course approved by the Department of Education; or
- b. A Registered Occupational Therapist or an Occupational Therapy Assistant; or
- c. A degree in Therapeutic Recreation.

“Administrator” means a person licensed under the provisions of Section 32 MRSA Section 61, having the authority and responsibility for the operation of the institution and for staff performance in caring for residents in accordance with applicable legal requirements and policies approved by the governing authority.

“Adult Day Services” means the care and supervision of consumers who attend the facility during day time or night time hours, but are not residents of the facility.

“Advance Directives” means a written 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.

“Ambulatory” means a person who is physically and mentally capable of moving from place to place without the aid of another person.

“Applicant” means any person in whose behalf an application for a license is submitted.

“Approved” means acceptable to the Department.

“Automatic Call System” means an audio and visual alert system in which residents may press a button, and nursing personnel are automatically notified by means of a light or a buzzer that a resident is calling for assistance.

“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 rules established by the Maine State Board of Nursing and whose duties are assigned by a Registered Professional Nurse.

“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.

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“Charge Nurse/Nurse Manager” means the licensed nurse on duty who is assigned responsibility for the supervision of nursing services during a particular shift.

“Clinical Record” refers to the medical record maintained on each resident in accordance with professional standards and practices.

“Convenience” is defined as any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the residents’ best interest.

“Danger” is a situation or condition of abuse, neglect, exploitation, or serious harm or immediate risk thereof.

“Department” means the Department of Human Services.

“Dependent Adult” means any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.

“Dietetic Service Supervisor” to be used interchangeably with Food Service Supervisor, means a person who:

- a. Is a qualified dietitian; or
- b. Is a graduate of a dietetic technician program, approved by the American Dietetic Association; or is a graduate of the Dietary Managers Association approved course and has passed the Certifying Board for Dietary Managers credentialing exam; or
- c. Is a graduate of a State-approved course in food service supervision; or
- d. Has training and experience in food service supervision and management in a military service, equivalent to the requirements in (b) or (c) above.

“Dietitian” means any individual currently licensed to practice dietetics in the State of Maine.

“Direct Care” means hands-on care provided to residents, including, but not limited to feeding, bathing, toileting, dressing, lifting, moving residents, treatments, and medication administration. Direct care does not include food preparation, housekeeping or laundry services except in circumstances when such services are required to meet the needs of an individual resident on a given occasion.

“Direct Care Provider” means, Registered Professional Nurses and Licensed Practical Nurses, and Certified Nursing Assistants who provide direct care to nursing facility residents.

“Director of Nursing/Director of Nursing Services” mean a Registered Professional Nurse who has the responsibility for the management and direction of nursing services.

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### DEFINITIONS

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“Discipline” is defined as any action taken by the facility for the purpose of punishing or penalizing residents.

“Distinct Part” means a physically separate unit that is clearly identifiable from the remainder of the facility. The "distinct part" must represent an entire, physically identifiable unit, consisting of all the beds within that unit, such as a separate building, floor, wing, or ward. Several rooms at one end of a hall, or a side of a corridor, may be accepted as a "distinct part" only if they constitute a wing or ward. 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 facility.

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

Eff. 10/15/04 “Facility” means a skilled nursing facility (SNF) or a nursing facility (NF) or a distinct part of an institution.

“Feeding Assistants” are paid staff, who have successfully completed a State approved training program and who assist residents with their meals. Feeding assistants are not considered direct care staff.

“Food Service Supervisor”. This term may be used interchangeable with “Dietetic Service Supervisor”.

“Incapacitated Adult” means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, or to the extent the adult cannot effectively manage or apply his/her estate to necessary ends.

“Incident and Accident” refers to any occurrence which affects the safety, health, or well being of a resident, staff or visitor. This could include falls, lacerations, abuse, bruises (whether origin is known or unknown), etc.

“Infection Control Program” means a program that is designed to provide a safe, sanitary, and comfortable environment for the residents and to help prevent the development and transmission of disease and infection.

“In-Service Training Program” refers to a program of orientation and continuing education for all employees.

“Interdisciplinary Team” (is used interchangeably with Multidisciplinary Team(MDT) and refers to the attending physician, a registered nurse and other appropriate staff and residents/family and others of their choice, in disciplines as determined by the resident's needs.

“Legend Drug” or prescription drug means those drugs that are required by Federal or state law or rule to be dispensed only on prescription.

“Licensed Practical Nurse” (LPN) means an individual currently licensed to practice practical nursing in the State of Maine.



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### DEFINITIONS

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“Maine Registry of Certified Nursing Assistants” is a listing of certified nursing assistants who meet the educational requirements of the Maine State Board of Nursing. The Registry includes notation of conviction(s) and/or substantiations of resident abuse, neglect and/or misappropriation of residents' property by the CNA in accordance with the Rules and Regulations Governing the Functioning of the Maine Registry of Certified Nursing Assistants.

“Medical Director” means a physician contracted by the facility to provide consultation regarding resident care policies and services and to participate in related committees.

“Medication Error” means the administration of any medication incorrectly; i.e., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, or the administration of a medication without a valid order.

“Mental Retardation and Mental Illness” mean, as defined for Pre-Admission Screening and Annual Resident Review (PASARR) requirements:

Mental Retardation is "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period".

Mental Illness is a primary or secondary diagnosis of a mental disorder as defined in the American Psychiatric Association Diagnostic and Statistic Manual (DSM-III 1R), current edition, and which does not include dementia.

“Minimum Data Set (MDS) ” is the state approved resident assessment instrument.

“Multilevel Facilities” means any nursing facilities that are located on the same contiguous grounds with licensed assisted living services, congregate housing services or home health services.

“Multidisciplinary Team” (MDT) may be used interchangeably with Interdisciplinary Team)and refers to the attending physician, a registered nurse and other appropriate staff and residents/family and others of their choice, in disciplines as determined by the residents’ needs.

“Neglect” means a threat to an adult's health or welfare by physical or mental injury or impairment, lack of protection or prevention from these, or the deprivation of or lack of essential needs. Neglect occurs on an individual basis when a resident receives a lack of care (e.g., absence of frequent monitoring for a resident known to be incontinent, resulting in being left to lie in urine or feces).

“Nursing Assistant” means an individual who is enrolled in a training program for assistants to nurses, for which the curriculum has been approved by the Maine State Board of Nursing.

“Nursing Facility or Nursing Home” means a facility licensed by the Department to provide nursing services.

“Nursing Staff” means Registered Professional Nurses, Licensed Practical Nurses, Certified Nursing Assistants, Certified Nursing Assistants/Medications and nursing assistants.

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### DEFINITIONS

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

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

“Potentially Hazardous Foods” means any food or ingredient, natural or synthetic, capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms.

“Pre-Admission Screening” refers to the procedure that screens each applicant for admission to a nursing facility in order to ensure that the facility does not admit an individual with mental illness or mental retardation, unless the Department of Mental Health and Mental Retardation has determined that the individual requires the level of care furnished by the facility.

“Principles of Reimbursement” means the principles of reimbursement for nursing facilities promulgated from time to time by the Department.

“Prospective Case-Mix Reimbursement System” means a method of paying health care providers rates that are established in advance. These rates take into account the fact that some residents are more costly to care for than others.

“Qualified Social Worker” means a person holding a current and valid license as required by State law to practice social work services.

“Registered Nurse” or “Registered Professional Nurse” means an individual currently licensed to practice professional nursing in the State of Maine.

“Resident” means a person who resides and receives services or care in a nursing facility.

“Resident Assessment Instrument (RAI)” means a standardized approach for applying a problem identification process. It gathers definitive information on a resident’s strengths and needs which must be addressed in an individual care plan.

“Resident Assessment Protocol (RAP)” means the required structured approach to resident assessment and problem identification.

“Respite Care” means care anticipated to be provided for a period of thirty (30) days or less for the purpose of temporarily relieving a family member or other caregiver from his or her daily caregiving duties. All nursing facility regulations shall apply to admissions for respite care.

“Restraint” means any device which is intended to restrict freedom of movement or access to one's body or any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

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### DEFINITIONS

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“Physical Restraints” are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident’s body that the individual cannot remove easily and which restricts freedom of movement or normal access to one’s body.

“Chemical Restraint” is defined as a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms.

“Risk” means that there is reasonable cause to believe that injury, hazard, damage or loss may occur.

“Safe Temperatures” as applied to potentially hazardous foods, means that internal temperatures of 41 degrees Fahrenheit or below (for cold food) and 140 degrees Fahrenheit or above (for hot foods), unless otherwise specified in these regulations, and 0 degrees Fahrenheit or below for frozen foods.

“Serious Harm” means:

- a. Serious physical injury;
- b. Serious mental injury or impairment, evidenced by severe anxiety, depression, or withdrawal, untoward aggressive behavior or similar dysfunctional behavior; or
- c. Sexual abuse or exploitation.

“Skilled Nursing Care”, for the purpose of these regulations, means that:

- a. The service would constitute a skilled service where the inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the direct supervision of professional nursing personnel;
- b. The restoration potential of a resident is not the deciding factor in determining whether a service is to be considered skilled or unskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities; and
- c. A service that is generally unskilled would be considered skilled where, because of special medical complications, its performance or supervision and the observation of the resident necessitates the use of skilled nursing personnel.

“Skilled Nursing Facility” is a nursing facility which is certified to provide Medicare-reimbursed skilled nursing services.

“Specialized Rehabilitative Services” refers to services such as physical therapy, speech-hearing therapy, and occupational therapy.

“Specialized Unit” refers to a unit that provides the care to meet the specific needs of special groupings of residents, i.e., residents with Alzheimer’s or head trauma, etc.

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“Transfer Agreement” means an agreement with one or more hospitals which provides reasonable assurance that transfer of residents will be effected between facilities whenever such transfer is medically appropriate.

## CHAPTER 2

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### OBTAINING A LICENSE

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#### 2.A. Requirements

2.A.1. No person or entity shall operate a nursing facility without a license from the Department in force, authorizing such operation. (Title 22, Section 1811)

2.A.2. The person or entity applying for the license shall be responsible for complying with Maine Statutes and all rules and regulations adopted pursuant thereto. (Title 22, Section 1811)

2.A.3. Reimbursement shall not be accepted, by any person, for rendering nursing facility care for even one person not a relative within the third degree of kinship, without such person having first secured a license in force, authorizing such operation in accordance with these regulations.

#### 2.B. Appointment of Administrator

Each licensee shall appoint an administrator for each facility. The licensee and the administrator may be one and the same person.

#### 2.C. First Church of Christ, Scientist Homes

Nursing 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 for licensure by the Department. Approval shall be based upon conditions of public safety and sanitation. Certification shall be required by the First Church of Christ, Scientist, Boston, Massachusetts, that the home is operated in accordance with the practice and principle of that body, and the public shall be informed through the name of the home and any publicity thereon that such home is operated in accordance with the practice and principle of the Church body as indicated above. Nothing in these rules and regulations shall be construed to authorize any medical supervision, regulation or control of the remedial care and treatment of residents in certified Christian Science facilities.

#### 2.D. Application Procedure

##### 2.D.1. Filing of Application

Any person, partnership, association or corporation, including state, county or local governmental units desiring a license to operate a nursing facility shall, prior to the commencement of such operation, file with the Department a verified application containing the information required in this section. Application on behalf of a corporation or association shall be made by any two officers thereof or by its managing agent. All applicants shall submit satisfactory evidence of their ability to comply with the minimum standards of Title 22, and all rules and regulations adopted thereunder, and whether the applicant(s) are at least 18 years of age. (Title 22, Section 1814) Such application shall be on a form approved by the Department.

##### 2.D.2. Statement by Commissioner of the Department of Public Safety

Each applicant shall provide to the Department a written statement signed by an authorized representative of the Department of Public Safety or the proper municipal official designated in

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### OBTAINING A LICENSE

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Title 25, Chapters 311 to 321, M.R.S.A., Maine, 1964, to make fire safety inspections that the facility and premises comply with said Chapters 311 to 321 relating to fire safety.

#### 2.D.3. Policies

Each applicant for a skilled nursing facility or nursing facility shall provide the Department with a signed statement from the professional group of advisors indicating approval of the policies.

#### 2.D.4. Fees

Each application, submitted on or after July 1, 2003, for a license to operate a skilled nursing facility or nursing facility shall be accompanied by a fee of twenty-six (26) dollars for each bed contained within the facility. No such fee shall be refunded. All licenses issued shall be renewed annually upon payment of a like fee and compliance with Maine Statutes and any rules and regulations issued thereunder. No license granted is assignable or transferable. (Title 22, Section 1815 and 1815A)

#### 2.D.5. Additional Information

Each applicant shall provide to the Department such information as the Department may require, in order to determine the suitability of the applicant for licensure, in conformity with the provisions of the Statutes of Maine and rules and regulations promulgated thereunder.

#### 2.E. Initial Licensing

In addition to the requirements in Sections A, B, C, and D of this Chapter, each applicant for initial licensing shall provide:

##### 2.E.1. Floor Plans

A set of plans and specifications of the facility drawn to scale showing the name or number of each resident bedroom, service area, etc., and including the source of utilities, water and methods of waste disposal. If there is a distinct part, this part must be identified.

##### 2.E.2. Certificate of Need Approval

There must be an approved written Certificate of Need, signed by the Commissioner, Department of Human Services, or a written determination from the Department of Human Services that a Certificate of Need is not required.

##### 2.E.3. Statement by Bureau of Health

A written statement signed by an authorized representative of the Bureau of Health of the Department indicating compliance of the facility with all applicable State Statutes and appropriate rules and regulations promulgated thereunder relating to plumbing, water supply and sewage disposal.

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### OBTAINING A LICENSE

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#### 2.E.4. Policies

A copy of the policies governing the services the facility provides to be available to representatives of the Department and submitted to the Department only if specifically requested in writing. The Department will notify the facility in writing of any policies which are not approved, as being contrary to the provisions of Title 22 M.R.S.A. or rules promulgated thereunder.

#### 2.E.5. Transfer Agreement

Each applicant for a skilled nursing facility or nursing facility license shall provide a copy of all transfer agreements with licensed hospitals, upon request of the Department.

#### 2.E.6. Copy of the Lease

When a building or buildings is or are leased to the person or persons to operate as a licensed facility, a copy of the lease, showing clearly in its context which party to the agreement is to be held responsible for the maintenance and upkeep of the property, shall be filed with the application for a license. The Department shall be notified within seventy-two (72) hours, if there is any change in the lease agreements that may in any way affect the responsibility for maintenance and upkeep of this property.

#### 2.E.7. Compliance with Local Laws

A letter from the appropriate municipal official having jurisdiction over the premises where the facility is to be located indicating compliance with all local laws or codes relative to the type of facility for which licensure is requested.

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#### 2.E.8. Default License for New Nursing Facilities

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

#### 2.F. Issuance of License

##### 2.F.1. Specifications of License

For nursing facilities, each license issued by the Department shall specify:

- a. The name of the facility;
- b. The location of the facility;
- c. The name of the administrator;
- d. The maximum number of licensed beds, whether Skilled Nursing, Nursing or Dual;
- e. The effective dates of the license.

##### 2.F.2. Multilevel Facility License

For multilevel facilities, a single license will be issued by the Department, identifying each level of service.

##### 2.F.3. Facilities Located in Two Structures on the Same Grounds

When one owner, organization or corporation has separate facilities located in physically separated structures on the same grounds, separate licenses shall not be required.

##### 2.F.4. Facilities Operated by Same Management on Different Premises

Facilities operated by the same management on different grounds shall be required to have in effect a separate license for each facility.



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### OBTAINING A LICENSE

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#### 2.G. New Construction or Additions

No new construction or additions or alterations shall commence without the applicant having first referred the plans to the Office of Planning, Research and Development for their recommendations, and without having prior written approval by the Department. The provisions of these rules and regulations do not prohibit the use of equivalent alternate space utilizations, new concepts of facility plan design and new finish materials.

2.G.1. An application for approval of new construction or additions or alterations shall be submitted on forms to be furnished by the Department.

2.G.2. Commencement of construction shall not occur until a certificate of approval has been issued by the Department.

2.G.3. Unless construction is commenced within one year from date of written approval of final working drawings and specifications, the application and the drawings shall be resubmitted for renewal of review and approval.

2.G.4. Minor alterations which do not affect the structural integrity of the building, which do not affect fire safety, which do not change primary functional operation, or which do not change the number of beds for which the facility is licensed, need not be submitted.

2.G.5. Routine maintenance and repairs do not require prior approval by the Department.

#### 2.H. Changes

##### 2.H.1. Changes in Number of Beds

All requests for any increase or decrease in the number of beds shall be made in writing to the Department, at least forty five (45) days prior to the effective date. No changes in the number and/or location of beds, or the distinct part, shall be made without prior written approval of the Department.

##### 2.H.2. Changes in a Licensed Facility

No change shall be made in a licensed facility's operation, program or services without prior written approval of the Department.

##### 2.H.3. Proposed Changes in Physical Plant

No changes in the physical plant or its utilities shall be made until approved in writing by the Department.

##### 2.H.4. Utilization of Additions and Renovations

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### OBTAINING A LICENSE

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No new resident rooms or new areas to be used by residents shall be occupied or utilized by residents without prior written approval of the Department.

#### 2.H.5. Change in Ownership of Facility

a. No license shall be assigned or transferred.

b. An application for a change of ownership must be submitted in accordance with the Certificate of Need requirements.

c. Each application for a license from a new owner shall be accompanied by a copy of the approved Certificate of Need and a statement from the previous owner or his/her duly authorized representative concerning the change of ownership, or a copy of the deed or other validating document.

d. When the ownership of an occupied facility changes, upon receipt of a completed application and fee, the Department may issue a temporary license for a period not to exceed ninety (90) days. During this period of time, the Department may elect to conduct on-site visits to determine compliance of the new owner with the requirements for initial licensure, unless cause is found for refusal to issue a license which cannot reasonably be expected to change during such ninety (90) day period. If the new owner is in full compliance with the requirements, a license will be issued for the remaining period of time of the current license.

#### 2.H.6. Change of Administrator

A change of administrator shall be reported, in writing, to the Department no later than seventy-two (72) hours prior to the change taking effect. The name and administrator license number of the individual who is to become administrator is to be submitted at that time. The license to operate the facility shall also be returned to the Department to be voided, and a new license issued bearing the name of the new administrator.

## CHAPTER 2

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### OBTAINING A LICENSE

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#### 2.I. Waiver Provisions

Where structural changes in an existing facility are necessary for such facility to comply with the provisions of these regulations and the change would result in an unreasonable hardship to the owners or operators, the Department may grant a waiver of one or more of the specific provisions of these regulations to an operator or owner, in accordance with the following requirements:

2.I.1. Prior to the issuance or renewal of any license, the facility must make written application requesting a waiver to the Department. Such application shall contain a written justification for the request and shall state the specific provisions of these regulations for which a waiver is being requested, and shall document what steps the facility is taking or will take to bring such facility into compliance with those provisions of these regulations, for which a waiver is requested.

2.I.2. The Department may request additional information before making a decision as to granting or denying an application for a waiver.

2.I.3. No waiver shall extend beyond the term of the license and a new waiver shall be required when the license of the facility is renewed. Failure of a facility to implement reasonable steps in order to bring the facility into conformance with these regulations shall be grounds for the denial of a waiver.

2.I.4. No waiver or waivers shall be granted if there would be an adverse effect to the health or safety of the residents of a facility.

2.I.5. The facility will be notified in writing when a waiver is granted, and the specific area for which a waiver has been granted shall be noted on the license.

#### 2.J. Posting of License

The license shall be conspicuously posted in an area highly visible to residents and the public.

#### 2.K. Availability of Survey Results

Facilities will have the results of State and Federal surveys, which include the plan of correction, in a place readily accessible to residents, resident representatives and the general public and must post a notice of their availability. Copies of these may be provided by the facility upon reasonable request.

## CHAPTER 3

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### LOSS OF, RENEWAL OF, TEMPORARY & CONDITIONAL LICENSES

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#### 3.A. Refusal to Issue a License

The Department shall refuse to issue a license to the applicant covering the premises identified in the application, if it finds the representation made in the application to be materially incorrect or insufficient, or if it finds that the applicant, the premises, or the designated administrator of the facility do not meet all requirements of law and regulations. Any person who is aggrieved by the decision of the Department in refusing to issue a license or the renewal of a license, may file a statement or complaint with the Administrative Court designated in Title 5, Chapter 375 M.R.S.A., Section 8001 et. seq.

#### 3.B. Right of Entry and Inspection

The Department and any duly designated representative thereof shall have the right to enter upon and into the premises of any facility licensed pursuant to these rules and regulations at any time, without threat of injury, verbal abuse or harassment, in order to determine the state of compliance with the provisions of rules and regulations in force pursuant thereto. Such right of entry and inspection shall extend to any premises which the Department has reason to believe are being operated or maintained as a health care facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the court of jurisdiction authorizing the same. Any application for a license made pursuant to these rules and regulations shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with such application. (Title 22, Section 1820-A)

#### 3.C. Renewal of License

At least twenty (20) days prior to the expiration of a license to operate a facility, an application and the required fee for a renewal thereof shall be submitted to the Department on a form approved by the Department, and accompanied by such additional information as may be required. Upon receipt and review of applications and determination of compliance with the requirements of the State Statutes and any rules and regulations adopted pursuant thereto, the Department shall renew such license for a period of one year, unless it finds that there are specific and sufficient grounds either for the denial of the application for renewal or for renewing the license on a temporary or conditional basis.

#### 3.D. Temporary or Conditional License

If the Department finds that the immediate interests of the residents in a licensed facility and the interest of the general public would be best served by offering such facility the opportunity to correct a condition forming the grounds for revocation of, or refusal to renew a license, it may afford such opportunity. For such purposes, it may issue a temporary or conditional license in accordance with Title 22, Section 1817.

#### 3.E. Suspension or Revocation of License

## CHAPTER 3

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### LOSS OF, RENEWAL OF, TEMPORARY & CONDITIONAL LICENSES

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The Department may, in addition to any other rights or remedies which it may have, file a statement or complaint with the Administrative Court designated in Title 5, Chapter 375 M.R.S.A., Sections 8001 et. seq., requesting suspension or revocation of any license on the following grounds: Violation of Title 22, M.R.S.A., Maine, 1964, or the rules and regulations issued pursuant thereto; permitting, aiding or abetting the commission of any illegal act in such institutions; conduct of practices detrimental to the welfare of the residents or any other violation of applicable law or regulation. Upon suspension or revocation of a license, the license shall be immediately surrendered to the Department. The Department may set forth the conditions which shall be met by the facility to the satisfaction of the Department. (See Chapter 22)

#### 3.F. Emergency Suspension

Whenever, on inspection by the Department, conditions are found to exist which violate this chapter or departmental regulation issued thereunder which, in the opinion of the Court, immediately endanger the health or safety of patients, or both such health or safety, in any of such institutions to such an extent as to create an emergency, the Department by its duly authorized agents, may suspend said license until such time as the Department determines that the emergency no longer exists or until a decision is rendered by the Administrative Court. The Department shall give written notice of such emergency suspension by delivering notice in hand to the licensee. If the licensee cannot be reached for personal service, the notice may be left at the licensed premises with a licensed staff person. Whenever a license is suspended by the Department under this emergency provision, the Department shall file a complaint with the Administrative Court requesting suspension or revocation of such license. (See Chapter 22)

#### 3.G. Public Notice

If the license is revoked or suspended, or a conditional license is voided, the Department will advise the public of such action. The notice to the public will be in the form of a paid legal notice in the local newspaper(s), published within fifteen (15) days following the termination, suspension or revocation of the license.

#### 3.H. Involuntary Closing of a Licensed Facility

If the license is revoked or suspended, or a conditional license is voided, or the Department refuses to issue or renew a license, the facility shall, in consultation with the Department, make appropriate arrangements for the orderly transfer of all residents.

## CHAPTER 3

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### LOSS OF, RENEWAL OF, TEMPORARY & CONDITIONAL LICENSES

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#### 3.I. Voluntary Closing of a Licensed Facility

Whenever a licensed facility voluntarily discontinues operation, the facility shall notify the Department, and during the period when it is preparing for such discontinuance, the facility shall inform the resident, the next of kin, legal representative or agency acting on the resident's behalf of the fact and the proposed time of such discontinuance, with at least thirty (30) days notice so that suitable arrangements may be made for the orderly transfer and care of such resident. In the case of any resident who has no person acting on his/her behalf, the facility shall be responsible for assisting such resident to arrange for a suitable transfer prior to the discontinuance of operation. Immediately upon discontinuance of operation of a licensed facility, the owner shall surrender the license to the Department.

## CHAPTER 4

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### ADMINISTRATION

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#### 4.A. Administrator

##### 4.A.1. Qualifications

The administrator of a facility licensed pursuant to these regulations shall have a current administrator's license or a temporary permit issued by the Nursing Home Administrators Licensing Board. Hospital based facilities are not required to have a licensed nursing home administrator.

##### 4.A.2. Functions

The administrator designated on the license shall be responsible for:

- a. Carrying out the policies of the facility;
- b. The day-to-day operation and management;
- c. The control, conservation and utilization of physical and financial resources;
- d. The hiring of an adequate number of qualified, competent personnel;
- e. The discharge of such functions as the licensee may properly delegate to him/her;
- f. Ensuring that the facility is in compliance with State licensing and Federal certification regulations.

##### 4.A.3. Non-Licensed Person to Act in Absence of Administrator

An 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) days shall be reported in writing to the Department.

##### 4.A.4. Non-Licensed Acting Administrator for Emergency Conditions

If the licensee of a licensed skilled nursing facility and/or a nursing facility is required to secure a new administrator as a result of an unexpected vacancy, he/she may, upon seventy-two (72) hours notice to the Department and in accordance with the rules and regulations thereof, place the facility in charge of an acting administrator qualified through current experience in administrative long term care responsibilities. This shall be for such limited time mutually agreed upon between the Department and the licensee, as may be necessary to permit the securing of a licensed administrator, but in no event to exceed sixty (60) days. When a licensed administrator has been secured, the provisions of Section 2.H.6., Change of Administrator, shall apply. If unable to secure a licensed administrator within sixty (60) days, the facility shall submit to the Department written evidence of action taken to secure an administrator.

##### 4.A.5. Full-Time Administrator

Each nursing facility larger than forty (40) beds in size shall have a full-time administrator.

##### 4.A.6. Part-Time Administrator

- a. Each nursing facility of forty (40) beds or less in size, may have a part-time administrator.
- b. All duties and schedules of working hours of part-time administrators of nursing facilities shall be outlined in the policies of the facility.

##### 4.A.7. Shared Administrator

- a. Separately licensed nursing facilities and/or assisted living facilities may share the same administrator as long as the number of beds for which the administrator is responsible does not exceed one hundred (100), subject to approval of the Department.

## CHAPTER 4

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### ADMINISTRATION

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b. Requests to the Department for exceptions to (a) above may be made in writing when administrative functions for two (2) or more licensed facilities are carried out in a central office. Such requests shall define the functions being handled centrally. The Department shall indicate in writing whether or not the request for an exception is granted.

c. Any sharing of the same administrator shall be defined and the duties and schedule of working hours for each facility shall be outlined in the policy material of the facilities involved.

#### 4.A.8. Administrator In Training

Any facility that has an administrator in training (AIT) must ensure that a licensed administrator or designee other than the AIT is in charge of the facility. No AIT is to be listed on any facility license as the administrator.

#### 4.B. Register

4.B.1. There shall be a waiting list for facility admissions which shall be maintained in a bound book, updated as necessary and available for public review.

4.B.2. There shall be a resident admission and discharge register in a bound book or on a computer identifying each resident and the date admitted to and discharged from the facility.

#### 4.C. Daily Census

Each facility shall maintain a daily census of residents, including the following:

4.C.1. Admissions;

4.C.2. Discharges;

4.C.3. The number and bed locations of each resident in the facility as of midnight each day.

#### 4.D. Transfer Agreement

##### 4.D.1. Requirements

Each facility shall have in effect a written agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of residents and their records, which provides the basis for effective working arrangements under which inpatient hospital care or other hospital services are available promptly to the facility's residents when needed.



## CHAPTER 4

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### ADMINISTRATION

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#### 4.D.2. Content

- a. The transfer agreement shall provide for the transfer of written information pertaining to the care which the resident has been receiving.
- b. The transfer agreement shall provide for the transfer of written information relative to personal effects of significant value.

#### 4.D.3. Execution

Each transfer agreement shall be signed by the administrator or authorized representative of each facility participating in the agreement.

#### 4.E. Outside Resources

##### 4.E.1. Requirements

If the facility does not employ a qualified professional person such as a physical therapist, occupational therapist or speech therapist to render a specific service to be provided by the facility, there shall be arrangements for such a service through a written agreement with an outside resource, a person or agency, that will render direct service to residents or act as a consultant.

##### 4.E.2. Contents of Agreement

- a. The responsibilities, functions, objectives, and terms of the agreement, including financial arrangements and charges, of each such outside resource shall be delineated in writing.
- b. The agreement shall specify that the facility retains administrative responsibility for the services rendered.
- c. When the agreement is with a consultant, there shall be provision for dated, signed reports to the administrator of assessments and/or recommendations. These shall be retained by the administrator for follow-up action and evaluation of performance.

##### 4.E.3. Execution

The agreement shall be signed by the administrator or authorized representative and the person or agency providing the service.

#### 4.F. Rebating Prohibited

No owner, administrator, employee or representative of a licensed facility shall directly or indirectly pay any commission, bonus, or gratuity in any form whatsoever to any physician, organization, agency or person for residents referred.

## CHAPTER 4

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### ADMINISTRATION

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#### 4.G. Admissions

A facility must establish identical practices for admissions, transfers and discharges for all individuals regardless of source of payment, as addressed below.

##### 4.G.1. Admissions

###### a. The facility must not:

1. Require a third party guarantee of payment to the facility as a condition of admission, or to expedite admission, or continued stay in the facility;
2. Charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility;
3. Require residents or potential residents to waive their rights to Medicare or Medicaid;
4. Require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

###### b. A facility may:

1. Charge any amount for services furnished to non-Medicaid residents consistent with the requirement in 4.G.1.a.
2. Require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, or to provide facility payment from the resident's income or resources, without incurring personal financial liability.
3. Charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the Maine Medical Assistance Manual as included in the term "nursing facility services".
4. Solicit, accept or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility.
5. A nursing facility may decline to admit a prospective resident after an evaluation of the person's clinical condition and related care needs and a determination that the facility lacks qualified staff to meet the level of care required for that person. A nursing facility is not subject to penalty or sanction for declining to admit a prospective resident for whom the facility lacks sufficient staff to meet the resident's level of care.

## CHAPTER 4

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### ADMINISTRATION

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#### 4.G.2. Deceased Residents

A facility shall comply with all appropriate Maine statutes and regulations pertinent to deceased residents.

#### 4.H. Quality Assurance Committee

All nursing facilities must maintain a quality assurance committee, which may act as a committee of the whole, and which reports to the administrator or the Governing Body.

##### 4.H.1. Composition of Committee

- a. The Director of Nursing Services;
- b. The Medical Director;
- c. A Pharmacist;
- d. At least three (3) other members of the facility staff.

##### 4.H.2. Responsibilities of the Committee

- a. Meet at least quarterly;
- b. Monitor the quality, quantity and necessity of services. Identify and document problems or deficiencies.
- c. Develop and implement appropriate plans of action to correct identified problems or deficiencies which shall be available for review upon request of the Department.

##### 4.H.3. Components and Functions of the Committee

###### a. Infection Control

1. Assure policies and procedures are based upon current standards and Centers for Disease Control guidelines for:

- a. Prevention of infection;
- b. Universal precautions;
- c. Employee and resident infections;
- d. Linen handling;
- e. Food handling;

2. Monitor and investigate infections.

###### b. Accident Prevention

Monitor and analyze incident reports and recommend policies and procedures for accident prevention.

###### c. Pharmaceutical Services

Monitor pharmaceutical practices, identify concerns, and recommend changes, when necessary.

###### d. Utilization Review

## CHAPTER 4

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### ADMINISTRATION

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Establish and monitor a Utilization Review plan that shall include:

1. Monitoring of admissions (regardless of payment source), and necessity of services;
2. Review of all residents (regardless of payment source), continued stays and discharge planning; and
3. Review the implementation of monitoring of appeal rights and the process of transfer and discharge notice.

#### 4.I. Complaints

4.I.1. Any person may file a complaint with the administrator or any member of the facility staff.

4.I.2. A system must be established for the review, within forty-eight (48) hours, of each complaint received by the administrator and/or any designated member of the facility staff. A report of findings and action taken shall be prepared and submitted to the Quality Assurance Committee, and be available for review upon request of the Department.

#### 4.J. Reporting of Abuse, Neglect or Misappropriation of Resident Property

4.J.1. The facility must ensure that all staff are knowledgeable of the Adult Protective Services Act and that all alleged violations involving mistreatment, neglect, and abuse, including injuries of unknown source and/or misappropriation of resident property, are reported immediately, through established procedures, to the administrator of the facility and to other officials in accordance with State law.

4.J.2. The facility must have evidence that all alleged violations are thoroughly investigated and in a timely manner. Policies must address administrative procedures to be implemented to prevent further potential abuse while the investigation is in progress.

4.J.3. The results of all investigations conducted in-house must be reported to the administrator or his/her designated representative and to other officials in accordance with State law. If the alleged violation is verified, appropriate corrective action must be taken. All reports must be made available to the Department upon request.

## CHAPTER 5

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### FACILITY POLICIES

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#### 5.A. Professional Policy Group

##### 5.A.1. Requirements

Each facility shall have written policies which govern all areas of services provided and are developed with the advice of, and with provisions for, annual review by a group of professional personnel including the administrator, Director of Nurses, a physician, a registered pharmacist, and such other professional personnel as necessary.

##### 5.A.2. Meetings

The professional policy group shall meet as necessary, but at least annually, to review written policies and reports of the Quality Assurance and other Committees. All members of the group should be present or have input and minutes of meetings shall be recorded and reflect the activities.

5.A.3. The professional policy group meetings may be incorporated within the Quality Assurance Committee.

#### 5.B. Written Policies

5.B.1. The written policies of each facility shall be consistent with State licensing and Federal certification requirements and shall include:

- a. Specific reference to indicate the person or persons responsible for the execution of such policies;
- b. A written outline of the objectives of the facility;
- c. Provision for these written policies to be available at all times to residents, families, admitting physicians, sponsoring agencies, staff, and the public;
- d. Provision for implementation of policies and training of staff;

5.B.2. Policies shall address all areas of services provided and facility practices regarding:

- a. Resident Rights, including advanced directives for care and treatment, and grievance procedures;
- b. The types and extent of services that are available in the facility;
- c. The extent of medical and nursing practices that may be provided by the facility;
- d. the type of residents that the facility will accept, based on sex, mental status, source of referral, etc. Policies should also provide that residents will be accepted regardless of race, color, national origin, sexual orientation or reimbursement source;
- e. the waiting list for facility admissions;

## CHAPTER 5

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### FACILITY POLICIES

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- f. the Quality Assurance Committee;
- g. admissions, transfers and discharges:
  - 1. provision for prevention of resident transfer from one part of the facility to another, except from a private room, solely because of Medicaid status;
  - 2. provision for prevention of discharging a patient from a nursing facility solely because of Medicaid status;
  - 3. nursing facility must establish and follow written readmission policies which are consistent with all applicable regulations and statutes.
- h. Physician services;
- i. Emergencies;
- j. Pharmaceutical services;
- k. Dietary services;
- l. Diagnostic and other services, including the tests which may be done within the facility;
- m. Written agreements with outside resources;
- n. Social services;
- o. Independent and group activities;
- p. Physical and chemical restraints;
- q. Resident records;
- r. Maintenance, laundry and housekeeping services;
- s. Infection control and waste management;
- t. Smoking restrictions;
- u. Dental services;
- v. Disaster preparedness;
- w. Reporting of abuse, neglect and/or misappropriation of resident property;
- x. Nursing services;

**CHAPTER 5**

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**FACILITY POLICIES**

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y. Staff orientation and inservice;

z. Rehabilitative services.

6.A. Contract Between Resident and Representative of Facility

The presence of each resident admitted after the effective date of these regulations in a licensed facility shall be covered by a standardized contract executed at the time of admission, or prior thereto, by the resident or legal representative and the licensed facility (see Appendix A of these Regulations). Each party to such contract shall be entitled to a copy thereof and the licensed facility shall keep on file all contracts which it has with residents. The licensed facility shall not destroy or otherwise dispose of any such contract except as otherwise permitted by law.

6.B. Provisions of Contract

Each contract to which this section applies shall contain express provisions specifically setting forth the following:

6.B.1. The services and accommodations to be provided by the facility and the rates and charges therefor, including an outline of responsibilities for and payment of treatment and medications, special equipment and appliances, dressings, clothing, personal supplies of the resident; services of related medical and paramedical personnel; and any other related charges not covered by the facility's basic per diem rate;

6.B.2. The identity of the person or party who is to be responsible for personal funds of the resident, including the name, address and telephone number of the person to be responsible, if other than the resident or an agent of the facility;

6.B.3. The specification of any rights, duties and obligations of both residents and the facility in addition to those required by law;

6.B.4. Provision that a resident may obtain medical care from any qualified institution, agency or person of his/her choice, as long as that health care provider complies with any applicable laws or rules concerning the provision of care to the resident and with the reasonable policies of the facility;

6.B.5. Provision that a resident may obtain medication from any qualified pharmacy, as long as that pharmacy complies with any applicable State rules and federal regulations and with the reasonable policies of the facility concerning procurement of medication;

6.B.6. The established procedures to be followed in an emergency which cover immediate care of the residents, persons to be notified and reports to be prepared;



## CHAPTER 6

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### CONTRACTS WITH RESIDENTS

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6.B.7. Those facilities that decide to use the Standardized Contract, without any additions, are considered to meet State licensing requirements for contracts with residents. The standardized contract may contain any other provisions in a separate addendum/rider, which do not violate State law or rule or federal law or regulation and that are specifically allowed by the standardized contract found in Appendix A of these Regulations.

6.B.8. Provision for addressing discharge potential and planning.

#### 6.C. Contract Requirements

Each contract or agreement is subject to the following requirements:

6.C.1. No contract or agreement may contain a provision for the discharge or transfer of a resident to another facility or another room within the same facility which is inconsistent with State law or rule.

6.C.2. Each contract or agreement shall contain a complete copy of the department rules establishing residents' rights and shall contain a written acknowledgment that the resident has been informed of those rights. In the case of a person who is adjudicated incompetent, the written acknowledgment of those rights shall be made by a representative of the resident. No provision in the contract or agreement may negate, limit or otherwise modify any provision of the residents' rights.

6.C.3. No provision of a contract or agreement may require or imply a lesser standard of care or responsibility than is required by law or rule.

6.C.4. No provision of a contract or agreement may state or imply a lesser degree of responsibility for the personal property of a resident than is required by law or rule.

6.C.5. No contract or agreement may require the resident to sign a waiver of liability statement as a condition of discharge, even if the discharge is against medical advice. This does not prohibit a facility from attempting to obtain a written acknowledgment that the resident has been informed of the potential risk in being discharged against medical advice.

6.C.6. Each contract or agreement shall contain a provision which provides for at least thirty (30) days notice prior to any changes in rates and/or charges, responsibilities, services to be provided or any other items included in the contract or agreement.

6.C.7. No contract or agreement may require the resident to authorize the facility or its staff to manage, hold or otherwise control the income or other assets of a resident.

6.C.8. No contract or agreement may contain any provisions which restrict or limit the ability of a resident to apply for and receive Medicaid or which require a specified period of residency prior to applying for Medicaid. The resident may be required to notify the facility when an application for Medicaid has been made. No contract or agreement may require a deposit or other prepayment from Medicaid recipients. No contract or agreement may refuse to accept retroactive Medicaid benefits.

## CHAPTER 6

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### CONTRACTS WITH RESIDENTS

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6.C.9. Medicaid Payment is payment in full when the person's Medicaid eligibility begins. Nursing facilities are required to refund any payment, within thirty (30) days, which was received from a resident or family member for the period of time that the Medicaid eligibility was pending and the resident is then determined eligible for Medicaid.

6.C.10. No contract agreement may contain a provision which provides for the payment of attorneys' fees or any other cost of collecting payments from the resident.

6.C.11. A nursing facility may require an identification photograph of each resident. Photographs may not be used for any other purpose without the permission of the resident for each specific use. The permission must indicate the specific purpose which the pictures are to be used for and, except for the identification photograph, may not be contained in the admission contract or agreement.

#### 6.D. Obligations

The contract or any provision thereof shall not be construed to relieve any licensed facility of any requirement or obligation imposed upon it by Maine Statutes or any standards, rules or regulations pursuant thereto.

## CHAPTER 7

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### RESIDENTS' PROPERTY AND FINANCES

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#### 7.A. Authority and Responsibility

##### 7.A.1. Presence of Resident

The admission of a resident to a facility shall not confer on such facility or its owner, administrator, employees or representatives any authority to manage, use or dispose of any property of such resident, nor shall such admission or presence confer on any of the aforementioned persons any authority or responsibility for the personal affairs of the resident, except insofar as may be necessary for the safe and orderly management of the licensed facility.

##### 7.A.2. Guardian, Trustee or Conservator

No facility, and no owner, administrator, employee or representative thereof or their relative shall act as guardian, trustee or conservator for any resident of such facility or any of such resident's property. Exceptions to this requirement may be considered by the Department for residents who are relatives of the owner, administrator, employee or representative of the licensed facility or their spouse within the third degree of kinship.

##### 7.A.3. Safekeeping

A licensed facility shall provide for the safekeeping of personal effects, funds, and other property of the resident. For the protection of valuables, or in order to avoid unreasonable responsibility thereof, the facility may require that they be excluded or removed from the facility and kept at some place not subject to the control of the facility. Any removal or exclusion shall be done only after reasonable notice is given to the resident or his/her guardian.

#### 7.B. Protection of Resident Funds

The facility may not require residents to deposit their personal funds with the facility.

#### 7.C. Management of Personal Funds

Upon written authorization of a resident, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility under a system established and maintained by the facility in accordance with this Chapter.

##### 7.C.1. Permission to Manage Personal Funds

No operator or agent of any nursing care facility shall manage, hold or deposit in a financial institution the personal funds of any resident of the facility, unless the operator or agent has received written permission thereof from:

- a. The resident; or

## CHAPTER 7

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### RESIDENTS' PROPERTY AND FINANCES

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- b. The resident's guardian, trustee, or conservator, if such person exists and can be reached; or
- c. The Department, if a guardian, trustee, or conservator exists, but cannot be reached.

#### 7.D. Deposit of Funds

##### 7.D.1. Funds in Excess of \$50

The facility must deposit residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on those accounts to the respective residents.

##### 7.D.2. Funds Less Than \$50

The facility may maintain residents' personal funds that do not exceed \$50 in a non-interest bearing account or petty cash fund which is readily available upon request during normal business working hours.

#### 7.E. Accounting and Records

The facility must establish and maintain a system that assures a full, complete and separate accounting, according to generally accepted principles, of each resident's personal funds, regardless of source, deposited with the facility on the resident's behalf.

7.E.1. A written quarterly accounting must be given to the resident or responsible party.

7.E.2. The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

7.E.3. The individual financial record must be available upon request to the resident or legal representative during normal business working hours.

#### 7.F. Notice of Certain Balances

7.F.1. The facility must notify each resident who receives Medicaid benefits:

- a. When the amount in the resident's account reaches \$200 less than the Social Security Supplemental Income resource limit for one person, and
- b. That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the Social Security Supplemental Income resource limit for one person, the resident may lose eligibility for Medicaid or Social Security Supplemental Income.

#### 7.G. Conveyance Upon Death

## CHAPTER 7

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### RESIDENTS' PROPERTY AND FINANCES

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Upon death of a resident with a personal fund deposited with the facility, the facility must, within thirty (30) days, convey the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate; in the case of a resident with no responsible person, to the Public Administrator of the County.

#### 7.H. Assurance of Financial Security

The facility must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

#### 7.I. Limitation on Charges to Personal Funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made, or could be made, under Medicaid or Medicare or other third party insurance.

## CHAPTER 8

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### PERSONNEL

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#### 8.A. Personnel Policies

The facility shall have policies that address all personnel practices.

#### 8.B. Staff Qualifications

8.B.1. The facility must employ, on a full time, part time, or consultant basis those persons necessary to carry out the provisions of these regulations.

8.B.2. Staff must be licensed, certified, or registered in accordance with applicable State laws.

#### 8.C. Employees

##### 8.C.1. Nursing Staff

###### a. Licensed Staff

R.N.s and L.P.N.s must hold a current State of Maine license or permit, which must be verified prior to employment and upon each renewal.

###### b. Certified Nursing Assistant

1. A facility must not employ anyone as a nursing assistant for more than four (4) months, on a full-time, temporary, per diem, or other basis, unless that individual has completed a training and/or competency evaluation program that is based upon the standard curriculum established by the Maine State Board of Nursing and approved by the Department of Education, or has been granted reciprocity or has been deemed competent under Maine State Board of Nursing rules.

2. When an individual has not performed paid nursing services for a continuous period of twenty-four (24) consecutive months since the most recent completion of a training and competency evaluation program, the individual must meet qualifications for competency established by the Maine State Board of Nursing.

3. A facility may not use staff of outside agencies to perform nursing assistant duties, unless that person is a CNA.

4. The facility must check with the State of Maine Registry of Certified Nursing Assistants to assure that the prospective CNA is listed on the Registry and has no record of a conviction or a substantiated complaint of resident abuse, neglect or misappropriation of residents' funds or property.

###### c. Certified Nursing Assistant/Medications (CNA/M)

A CNA/M must be qualified as a CNA, as noted above, and also must have completed a course in the administration of medications as approved by the Department of Education, the curriculum of which has been established by the Maine State Board of Nursing.

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#### 8.C.2. Non-Nursing Personnel

There shall be adequate numbers of non-nursing personnel to perform the necessary services and meet the needs of the residents and the facility. These persons shall not give resident care, unless staffing patterns, training, qualifications and job descriptions reflect the activities of such multi-purpose personnel.

#### 8.C.3. In-Service Program

- a. There shall be an orientation program for all new employees that includes review of all applicable facility policies, including resident rights, job description, and related responsibilities.
- b. The facility must provide at least twelve (12) hours per year for CNA staff and periodic in-service education to all other employees.
- c. The in-service program shall be planned and include at least one program per year relating to resident rights, disaster preparedness, workplace safety and the identified educational needs of the staff.
- d. In-service education must include specific training for staff providing nursing and nursing related services to residents with cognitive impairments including but not limited to people with Alzheimer's or dementia and for those conditions which may be applicable to the resident population of the facility. For facilities with units specific to residents with Alzheimer's or dementia, refer to Chapter 23 of these Regulations.
- e. Records shall be maintained which indicate the content of and staff participation in all such orientation and staff development programs.

#### 8.C.4. Employees with Contagious or Infectious Diseases

No licensed facility shall knowingly employ or otherwise permit any person to serve therein in any capacity if such person has a communicable or infectious disease or condition which would make him/her dangerous to the health and welfare of residents therein.

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#### 8.C.5. Employment Restrictions

The facility must not employ individuals who have been convicted by a court of law or have had complaints substantiated by the Department of abusing, neglecting, or mistreating individuals or misappropriating funds or property in a health care or related setting.

#### 8.C.6. Reporting of Abuse (or Suspicion of)

- a. The facility must ensure that all staff are knowledgeable of the State Mandatory Reporting Law and that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and/or misappropriation of resident property, are reported immediately through established procedures, to the administrator of the facility and to other officials in accordance with State law.
- b. The facility must have evidence that all alleged violations were thoroughly and immediately investigated. Policies must address administrative procedures to be implemented to prevent further potential abuse while the investigation is in progress.
- c. The results of all investigations conducted in-house must be reported to the administrator or his designated representative and to other officials in accordance with State law as soon as completed. If the alleged violation is verified by the facility or the State Agency, appropriate corrective action must be taken. The reports shall be made available to the Department upon request.

#### 8.C.7. Age Requirement

No person under the age of sixteen (16) shall fulfill the staffing requirements for CNAs.

#### 8.C.8. Grievances

Employees may voice grievances and register complaints with the administrative staff or appropriate outside agencies without fear of reprisal or discharge and shall expect prompt response and disposition of the grievance. No facility may take any action toward an employee which would create a fear of reprisal or a fear of discharge.

#### 8.D. Personnel Records

##### 8.D.1. Employee Record on File

###### a. Employment History

A record shall be completed for each employee, kept on file in the facility, and shall be available to Department personnel for inspection. Each record shall contain documentation of references and checks, dates of employment, home address, education or background, social security number, occupational license number if applicable, past experience or type of employment, where previously employed, type



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of position employed for in this facility and last day employed (if no longer in present facility). The current occupational license number, when applicable, shall be on file.

#### b. In-services

Records shall be maintained of staff attendance at in-services and other educational programs.

#### c. Work Performance

A record shall be kept for each employee of signed performance evaluations.

#### d. Illness and Accidents

A record shall be kept for each employee of all illnesses and of all accidents occurring on duty.

#### e. Feeding Assistants

All nursing facilities shall maintain a record of the individuals who have successfully completed a State approved feeding assistance program. Feeding assistants shall not feed residents who require the assistance of staff with more specialized training, such as residents with recurrent lung aspirations, difficulty swallowing, on feeding tubes, and parenteral or IV feedings.

#### 8.E. Weekly Time Schedule

Each facility shall post a dated employee weekly time schedule in a convenient place for employee use. This shall contain each employee's name, job title and location, hours of work and days off for each day of the week. Any changes in staff or hours of work are to be posted on the time schedule. These weekly time schedules shall be kept on file in the facility for one year and shall be available to Department personnel for inspection.

#### 8.F. Laws of the Maine Department of Labor

The current regulations of the Maine Department of Labor shall be followed.

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#### **8.G. Identification Badges**

All direct care staff shall, at all times, wear identification badges reflecting their name and title, except in situations in which wearing an identification badge would create a safety hazard.

## CHAPTER 9

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### RESIDENT CARE STAFFING

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#### 9.A. Minimum Nursing Staff Requirements

The following minimum nursing staff requirements shall be met:

##### 9.A.1. Director of Nursing

- a. In each licensed nursing facility there shall be a Registered Professional Nurse employed full-time who shall be responsible for the direction of all nursing services delivered in the facility.
- b. The Director of Nursing must be qualified by education, training and experience in both Gerontology and nursing administration.
- c. If the Director of Nursing is functioning as a Temporary Administrator, a nurse shall be appointed to act as the Director of Nursing during that period of time.
- d. Lines of responsibility shall be clearly established in writing and shall be made known to all nursing staff and other appropriate personnel.

##### 9.A.2. Director of Nursing - Responsibilities

The Director of Nursing shall be responsible and accountable to the Administrator for:

- a. Assuring the delivery of all required services to residents;
- b. Developing and maintaining nursing service objectives, current standards of nursing practice, nursing policy and procedure and manuals, and written job descriptions for each level of personnel;
- c. Coordination of nursing services with other resident services;
- d. Establishment of the means of assessing the needs of residents and staffing to meet those needs on all shifts;
- e. Assuring the delivery of orientation programs and staff development;
- f. Participating in the selection of prospective residents in terms of nursing service they need and nursing competencies available;
- g. Assuring that a comprehensive assessment and plan of care is established for each resident, and that his/her plan is reviewed and modified and implemented as is necessary;
- h. Assuring the evaluation of the performance for all nursing personnel at regular intervals and making recommendations to the administrator;
- i. Recommending action when needed to control noise, maintain, repair or replace equipment; ensuring cleanliness and safety measures; providing proper allocation and utilization of space and equipment;

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### RESIDENT CARE STAFFING

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- j. Recommending to the administrator the number and levels of nursing personnel, supplies and equipment for safe resident care;
- k. Establishing priorities for budget items that are necessary to provide services;
- l. Participating in the Quality Assurance Committee and other committees as necessary.

#### 9.A.3. Licensed Staff Coverage

a. There shall be a Registered Professional Nurse on duty for at least eight (8) consecutive hours each day of the week.

b. Licensed nurse coverage shall be provided according to the needs of the residents as determined by their levels of care. The following minimum coverage shall be met:

##### 1. Day Shift

a. In each facility there shall be a licensed nurse on duty seven (7) days a week.

b. Each facility must designate a Registered Professional Nurse or a Licensed Practical Nurse as the charge nurse. In facilities with twenty (20) beds or less, the Director of Nursing may also be the charge nurse.

c. In facilities larger than twenty (20) beds, in addition to the Director of Nursing, there shall also be another licensed nurse on duty.

d. An additional licensed nurse shall be added for each fifty (50) beds above fifty (50).

e. In facilities of one hundred (100) beds and over, the additional licensed nurse shall be a Registered Professional Nurse for each multiple of one hundred (100) beds.

##### 2. Evening Shift

a. There shall be a licensed nurse on duty eight (8) hours each evening.

b. An additional licensed nurse shall be added for each seventy (70) beds.

c. In facilities of one hundred (100) beds and over, one of the additional licensed nurses shall be a Registered Professional Nurse.

##### 3. Night Shift

a. There shall be a licensed nurse on duty eight (8) hours each night.

b. An additional licensed nurse shall be added for each one hundred (100) beds.

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c. In facilities of one hundred (100) beds and over there shall be a Registered Professional Nurse on duty.

d. Registered Professional Nurse on Call

All licensed nursing facilities, regardless of size, shall have a Registered Professional Nurse on duty or on call at all times.

e. Private Duty Nurses

The presence of private duty nurses shall have no effect on the nursing staff requirements.

#### 9.A.4. Minimum Staffing Ratios

A. The nursing staff-to-resident ratio is the number of nursing staff to the number of occupied beds. Nursing assistants in training shall not be counted in the ratios.

The minimum nursing staff-to-resident ratio shall not be less than the following:

1. On the day shift, one direct-care provider for every 5 residents;
2. On the evening shift, one direct-care provider for every 10 residents; and
3. On the night shift, one direct-care provider for every 15 residents

The definition of direct care providers and direct care is found in Chapter 1 of these Regulations. (see Page 2)

#### 9.A.5. Multi-Storied Facilities

There shall be staff assigned to each resident floor at all times when residents are present.

#### 9.B. Assignment of Tasks

##### 9.B.1. Licensed Practical Nurse

Only nursing tasks for which that nurse has been trained and which are within the LPN scope of practice, as defined by the Maine State Board of Nursing, shall be assigned to the LPN.

##### 9.B.2. Certified Nursing Assistants

The nursing tasks assigned to a CNA shall only be those for which the CNA has been trained and which are within the scope of the duties, as defined by the Maine State Board of Nursing rules and regulations.

##### 9.B.3. Nursing Assistant

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- a. Prior to the initial assignment of a nursing task to a nursing assistant, the Registered Professional Nurse shall determine if the individual is enrolled in a course preparing nursing assistants. The Registered Professional Nurse may assign to that individual only those tasks for which the individual has been satisfactorily prepared as documented by the instructional staff. Such training program or course must be satisfactorily completed within four (4) months from the date of employment.
- b. When a nursing assistant is waiting for a training program to start, he/she may participate in non-direct care activities, such as making unoccupied beds and passing trays, and water and linens.

#### 9.B.4. Administration of Medication by a Certified Nursing Assistant/Medications

A certified nursing assistant/medications may administer medications only when this function is assigned by a registered professional nurse and there is a licensed nurse on duty.

#### 9.B.5. Feeding Assistants

All trained feeding assistants shall work under the supervision of a registered or licensed practical nurse. The decision to allow a feeding assistant to feed a resident is based on the charge nurse's assessment and the resident's latest assessment and plan of care. Facilities are responsible for any adverse actions resulting from the use of feeding assistants.

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#### 9.C. Sharing of Staff

Sharing of nursing staff is permitted between the nursing facility and other levels of assisted living on the same premises as long as there is a clear documented audit trail and the staffing in the nursing facility remains adequate to meet the needs of residents. All sharing of nursing staff must be approved in writing by the Department. There may not be sharing of nursing staff between the nursing facility and another non-nursing facility, whether it is physically attached or in proximity to the nursing facility without written approval by the Department. The non-nursing facility must provide its own separate activities, but may share housekeeping, laundry, dietary and maintenance staff, and account for these hours.

#### 9.D. Staffing Patterns

The facility is responsible for establishing its own staffing pattern according to the needs of the residents and in accordance with the provisions of these regulations.

10.A. Written Policies

Written policies shall be established by the governing body of each facility regarding the rights and responsibilities of the residents.

10.B. Procedures

Procedures shall be developed and adhered to for training of facility staff concerning these policies and procedures, and for making the policies available to residents, to any guardians, next of kin, sponsoring agencies or representative payees.

10.C. Exercise of Rights

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including the following:

10.C.1. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

10.C.2. The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

10.C.3. In the case of a resident adjudicated incompetent under the laws of the State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

10.C.4. The facility must inform the resident, legal representative or family member, both orally and in writing, in a language that he or she understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the resident's stay in the facility.

Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information and any amendments to it must be acknowledged in writing.

10.C.5. The resident has the right to inspect all records pertaining to himself/herself, upon oral or written request, within twenty-four (24) hours. Photocopies may be purchased and the facility must provide them within two (2) working days of the request.

10.C.6. The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.

10.C.7. The resident has the right to limit and/or refuse treatment, and to refuse to participate in experimental research.

10.C.8. The facility must display information and:



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- a. Inform each resident how to apply for Medicaid;
- b. Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or when the resident becomes eligible for Medicaid of:
  - 1. The items and services that are included in nursing facility services in the Maine Medical Assistance Manual and for which the resident may not be charged.
  - 2. Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services and,
- c. Inform each resident when changes are made to the items and services specified in Chapters 10.C.8.b.1. and 10.C.8.b.2.
  - 10.C.9. Inform each resident before, or at the time of admission, when changes occur, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicaid/Medicare or by the facility's per diem rate.
  - 10.C.10. The facility must furnish to each resident, before or at the time of admission, a written description of legal rights which includes:
    - a. A description of the manner of protecting personal funds, under Chapter 10.E.
    - b. A statement that the resident may file a complaint with the Division of Licensing and Certification, the Bureau of Elder and Adult Services or the Long Term Care Ombudsman Program concerning resident abuse, neglect, and/or misappropriation of resident property in the facility and other violations of residents' rights.
    - c. Information regarding Advance Directives as required by the Patient Self-Determination Act.
  - 10.C.11. Inform each resident of the name, specialty, and method of contacting the physician responsible for his or her care.

10.D. Notification of Changes

10.D.1. Except in a medical emergency or when a resident is incompetent, a facility must consult with the resident regarding any proposed significant changes in treatment or plan of care. The facility must notify the resident's physician, the resident's legal representative and, with the resident's permission, an interested family member, when there is:

- a. An accident involving the resident which results in injury.
- b. A significant change in the resident's physical, mental, or psychosocial status.
- c. A need to alter treatment significantly, or
- d. A decision to transfer or discharge the resident from the facility.

10.D.2. The facility must also promptly notify the resident and with the resident's permission, the resident's legal representative or interested family member when there is:

- a. A change in room or roommate assignment
- b. A change in resident rights under Federal or State law or regulations.

10.E. Protection of Resident Funds

10.E.1. The resident has the right to manage his or her financial affairs. The facility may not require residents to deposit their personal funds with the facility.

10.E.2. The individual financial record and a quarterly summary must be available on request to the resident or his or her legal representative.

10.F. Free Choice

The resident has the right to:

- 10.F.1. Choose a personal attending physician.
- 10.F.2. Choose a provider pharmacy.
- 10.F.3. Be fully informed in advance about care and treatment that may affect the resident's well-being.
- 10.F.4. Participate in planning care and treatment or changes in care and treatment, unless adjudicated incompetent or otherwise found to be incapacitated under the laws of the State.

10.G. Privacy

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10.G.1. The resident has the right to personal privacy and confidentiality of his/her personal and clinical records.

a. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meeting of family and resident groups, but this does not require the facility to provide a private room.

b. Except as provided in this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.

10.G.2. The resident's right to refuse release of personal and clinical records does not apply when:

a. The resident is transferred to another health care institution;

b. Record release is required by law or by third-party payment contract; or

c. Copies are requested by the Department.

#### 10.H. Grievances and Complaints

A resident has the right to:

10.H.1. Voice grievances and complaints with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances or complaints. Such grievances include those with respect to treatment which has been furnished, as well as that which has not been furnished.

10.H.2. File a complaint and/or a grievance with the State survey and certification agency, the Long Term Care Ombudsman Program, Legal Services for the Elderly and the Bureau of Elder and Adult Services respective to abuse, neglect and/or misappropriation of resident property in the facility.

10.H.3. Prompt efforts by the facility to resolve grievances and/or complaints the resident may have, including those with respect to the behavior of other residents.

10.H.4. A written response to be provided whenever possible to the grievant, describing disposition of the complaint.

10.I. Examination of Survey Results

A resident has the right to:

10.I.1. Examine the results of the most recent State licensing and Federal certification survey of the facility and any plan of correction in effect.

10.I.2. Receive information from agencies acting as client advocates, and be afforded the opportunity to contact agencies.

10.J. Work

The resident has the right to:

10.J.1. Refuse to perform services for the facility.

10.J.2. Perform services for the facility, if he or she chooses, when:

- a. The facility has documented the need or desire for work in the plan of care.
- b. The plan specifies the nature of the services performed and whether the services performed are voluntary or paid.
- c. Compensation for paid services is at or above prevailing rates.
- d. The resident agrees to the work arrangement described in the plan of care.

10.K. Mail

The resident has the right to privacy in written communications, including the right to:

10.K.1. Send and receive unopened mail promptly.

10.K.2. Have access to stationary, postage, and writing implements at the resident's own expense.

10.K.3. Assistance provided to the resident upon request.

10.L. Access and Visitation Rights

The resident has the right to receive visitors. The facility must allow access to the resident for such visitors at any reasonable hour.

10.L.1. The resident has the right and the facility must provide immediate access to any resident by:

- a. Any representative of the Secretary of the Department of Health and Human Services.

- b. Any representative of the State.
- c. The resident's individual physician.
- d. A representative of the Long Term Care Ombudsman Program or other authorized advocate(s).
- e. Immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time.
- f. Others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

10.L.2. The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

10.L.3. The facility must allow representatives of the Long Term Care Ombudsman Program to examine a resident's clinical records with the oral or written permission of the resident or the resident's legal representative, and consistent with State law.

#### 10.M. Telephone

The resident has the right to have regular access to the private use of a telephone. Amplification shall be provided for the hearing impaired.

#### 10.N. Personal Property

The resident has the right to retain and use personal possessions including some furnishings and appropriate clothing as space permits, unless to do so would infringe upon the rights or health and safety of other residents. The facility must provide prior notification to the resident, legal representative or responsible person in the event that the resident's personal possessions must be searched in order to protect the health and safety of the resident or other residents.

#### 10.O. Married Couples

The resident has the right to share a room with his/her spouse when married residents live in the same facility and both spouses consent to the arrangement.

#### 10.P. Self- Administration of Drugs

The resident has a right to self-administer drugs when the interdisciplinary team has determined that this practice is safe.

#### 10.Q. Transfer and Discharge Rights

10.Q.1.Definition

Transfer and discharge includes movement of a resident to a bed outside of the certified unit, whether that bed is in the same facility or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified unit.

10.Q.2.Transfer and Discharge Requirements

The facility must permit each resident to remain in the unit or facility, and not transfer or discharge the resident from the unit or facility unless:

- a. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the unit or facility.
- b. The transfer or discharge is appropriate because the resident's health and/or functional ability has improved sufficiently so that the resident no longer needs the services provided by the unit or facility.
- c. The safety and/or health of individuals in the facility is endangered.
- d. The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only charges allowable under Medicaid.
- e. The facility ceases to operate.

10.Q.3.Notice Before Transfer

Before a facility transfers or discharges a resident, the facility must notify the resident and, if known, a family member or legal representative of the resident, of the transfer or discharge and the reasons.

The resident's clinical record shall contain documentation describing the basis for the transfer or discharge.

10.Q.4.Contents of the Notice

Each notice must be written and include, in a language and manner understood by the resident.

a. In order to provide for informed resident decisions, a nursing facility shall provide lists of licensed providers of care and services for all patients prior to discharge for whom home health care is needed.

(1) For all residents requiring home health care, the list must include all licensed home health care providers that request to be listed and any branch offices, including addresses and telephone numbers, that serve the area in which the resident resides.

(2) The nursing facility shall disclose to the resident any direct or indirect financial interest which the nursing facility has in the home health care provider.

b. For all residents transferring to another nursing facility, a list must be provided of all nursing facilities that request to be listed that serve the area in which the resident resides or wishes to reside.

c. The reason for the transfer or discharge, including events which are the basis for such action.

d. The effective date of the transfer or discharge.

e. The location to which the resident is transferred or discharged.

f. Notice of the resident's right to appeal the transfer or discharge as set forth in the Maine Medical Assistance Manual.

g. The location to which the resident is transferred or discharged.

h. Notice of the resident's right to appeal the transfer or discharge as set forth in the Maine Medical Assistance Manual.

i. The mailing address and telephone number of the Long Term Care Ombudsman Program.

j. In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocate, Department of Mental Health, Mental Retardation and Substance Abuse Services.

k. The resident's right to be represented by himself or herself or by legal counsel, a relative, friend or other spokesman.

#### 10.Q.5. Timing of the Notice

Except when specified in Chapter 10.Q.2.c., the notice of transfer or discharge must be made by the facility at least:

- a. Thirty (30) days before the resident is transferred or discharged.
- b. As soon as practicable before transfer or discharge when:
  1. The safety and/or health of individuals in the facility would be endangered.
  2. The resident's health improves sufficiently to allow a more immediate transfer or discharge.
  3. An immediate transfer or discharge is required by the resident's urgent medical needs, or
  4. A resident has not resided in the facility for thirty (30) days.

#### 10.Q.6. Appeal of Transfer or Discharge

The resident has the right to appeal a transfer or discharge to the Administrative Hearings Unit of the Department.

#### 10.Q.7. Transfer or Discharge Orientation

The resident has the right to receive sufficient preparation and orientation to ensure safe and orderly transfer or discharge from the facility. This shall be documented in the resident record.

#### 10.R. Physical or Chemical Restraints

The resident has the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of punishment for certain behaviors or to accommodate the needs of the staff, and is not required to treat the resident's specific condition.

#### 10.S. Freedom From Abuse, Punishment or Involuntary Seclusion

The resident has the right to be free from neglect, verbal, sexual, physical or mental abuse and involuntary seclusion.

#### 10.T. The resident has the right to:

10.T.1. Choose activities, schedules, and health care consistent with his/her interests, assessments, and plans of care.

10.T.2. Interact with members of the community both inside and outside the facility.



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10.T.3. Make choices that are significant to the resident about aspects of his/her life in the facility.

#### 10.U. Organization and Participation

10.U.1. A resident has the right to organize and participate in resident groups in the facility.

10.U.2. A resident's family has the right to meet in the facility with the families of other residents.

10.U.3. The facility must provide a resident or family group, if one exists, use of private space.

10.U.4. Staff or visitors may attend meetings only at the group's invitation.

10.U.5. The facility must provide a designated staff person responsible for providing assistance and responding to written requests resulting from group meetings.

10.U.6. When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families and report back to the group.

#### 10.V. Residents' Council

##### 10.V.1. Establishment and Composition

a. The facility shall inform residents of their right to establish a council. This information shall be given to all residents or a family member or designated representative.

b. The residents have the right to have assistance in establishing a council. The council shall select a staff member, not related to the administrator, to assist the residents' council.

c. If there is no council, the facility must offer the residents, at least once a year, the choice to establish one by majority vote.

d. Records of council meetings and decisions, if prepared, shall be disseminated by the council and kept on file in the facility.

e. No employee or representative of the facility may be a member of the council or attend a meeting, unless requested by the group.

f. Family members may sit in on the council, at the group's invitation, but shall not be members.

g. Staff or visitors may attend meetings at the group's invitation.

##### 10.V.2. Responsibilities and Purpose

a. To review and make recommendations to strengthen the facility's policies and procedures relating to residents' rights.

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- b. To establish procedures for informing all residents about their rights.
- c. To serve as a forum for obtaining and disseminating information, soliciting and adopting recommendations for facility programming and improvement and early identification of and recommendation for orderly resolution of residents' problems.
- d. To inform the administrator about the opinions and concerns of the residents.
- e. To find ways of involving the families of residents.

#### 10.W. Participation in Other Activities

A resident has the right to participate in social, religious and community activities that do not interfere with the rights of other residents in the facility.

## CHAPTER 11

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### PHYSICAL/CHEMICAL RESTRAINTS

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#### 11.A. Physical Restraints

The resident has the right to be free from any physical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

"Physical Restraints" are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

"Discipline" is any action taken by the facility for the purpose of punishing or penalizing residents.

"Convenience" is any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the residents' best interest.

11.A.1. All restraints must be ordered by a physician. PRN orders for restraints are prohibited.

11.A.2. Documented evidence of less restrictive measures to promote greater functional independence must be present in the medical record if restraints are used. The care plan must address the medical reason for which the restraints are used. The care plan must also contain a succession of approaches to be utilized before restraints are applied. Consultation with appropriate health professionals regarding the use of less restrictive approaches must be obtained when appropriate. Locked restraints are prohibited in any case.

a. Geriatric and other chairs from which the resident cannot arise without assistance and which impede movement are considered a physical restraint.

b. Bedrails are considered restraints when they are a barrier to the resident for getting out of bed.

11.A.3. If a trial of less restrictive measures is unsuccessful, and the facility decides that a physical restraint would enable and promote greater functional independence, then the restraining device may be used only for specific time-limited periods.

11.A.4. The continued use of restraints must be evaluated as needed, but at least quarterly.

11.A.5. There must be documented evidence that the resident, family, or legal guardian is aware of and agrees with this treatment.

11.A.6. All resident care staff shall be trained in the proper application and use of restraints.

11.A.7. Restraints may not be used to permit staff to administer treatment to which the resident has not consented.

11.A.8. No resident may be in a restraint without nursing staff on duty at all times in that section of the facility;

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### PHYSICAL/CHEMICAL RESTRAINTS

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11.A.9. Restraints are released for at least fifteen (15) minutes every two (2) hours and exercise provided. A written record is kept of the times of restraint and release.

11.A.10. Every resident in restraint is offered toilet privileges at least every two (2) hours or when request is made.

11.A.11. When the resident is in bed, the restraint must be properly applied to allow the resident to turn in bed. It is not necessary to release a restraint during the resident's normal sleeping hours, but the restraint must be checked at least every two (2) hours. A written record must be maintained of restraint checks.

11.A.12. Leather cuff and any crotch restraints shall not be used. Four-point restraints are prohibited.

11.A.13. Residents shall not be confined in a locked room; dutch doors are permissible, provided the top section is opened.

#### 11.B. Chemical Restraints

The resident has the right to be free from any chemical restraints imposed for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. These drugs are categorized as antipsychotics, antidepressants, anxiolytics and hypnotics.

"Chemical Restraint" is a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms.

"Discipline" is any action taken by the facility for the purpose of punishing or penalizing residents.

"Convenience" is any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the residents' best interest.

11.B.1. There must be evidence of a physical examination to rule out physical cause.

11.B.2. Residents receiving antipsychotic medications must receive gradual dose reductions and behavioral monitoring in an effort to discontinue these drugs, unless clinically contraindicated.

11.B.3. There must be documented evidence of less restrictive measures, including interventions to modify the resident's behavior or the environment, including staff approaches to care, treat or manage the resident's behavioral symptoms.

11.B.4. There must be evidence that the resident, family or legal guardian is made aware of potential side effects and agrees with this treatment.

11.B.5. Psychoactive drugs may not be used:

a. In quantities that interfere with the resident's level of alertness and ability to participate in rehabilitation programs; or

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### PHYSICAL/CHEMICAL RESTRAINTS

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b. On an as needed basis exceeding five (5) times in a seven (7) day period;

11.B.6. The use of chemical restraints will be part of the care plan, which will address the medical reason for which the medication is used, with a succession of approaches and interventions to be utilized prior to the administration of chemical restraints.

11.B.7. Close monitoring at regular intervals, as determined by the physician and multidisciplinary team, of all residents receiving psychoactive drugs will be maintained.

12.A. Pre-Admission Screening

Facilities may not admit any resident who has not had a pre-admission screening for mental illness and/or mental retardation.

12.A.1. Definition: For the purposes of this Chapter:

a. Mental Illness

An individual is considered to be mentally ill if the individual has a primary or secondary diagnosis of a mental disorder as defined in the American Psychiatric Association Diagnostic and Statistic Manual (DSM-III 1R), 4th edition, and which does not include dementia.

b. Mental Retardation

An individual is considered to be "mentally retarded" if there is "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period".

12.A.2. Individuals With a Diagnosis or Suspicion of Mental Illness

Prior to admission, the state mental health authority must determine, based on biopsychosocial evaluation performed by a person or entity other than the State mental health authority whether the individual has a diagnosis of mental illness and whether the individual requires acute and/or "specialized services".

12.A.3. Individuals With Mental Retardation or Related Condition(s)

The Department of Mental Health, Mental Retardation and Substance Abuse Services determines prior to admission whether the individual requires "specialized services" for mental retardation.

12.B. Comprehensive Assessment

Each resident of a nursing facility shall have a comprehensive assessment which will enable facility staff to develop a plan of care designed to assist the resident to reach the highest practicable level of physical, mental, and psychosocial functioning.

12.B.1. Definitions

a. Comprehensive Assessment

1. The comprehensive assessment includes the resident's medical, nursing and psychosocial history before admission and current medical diagnoses.

2. The comprehensive assessment must include:

- a. Identification and demographic information:
- b. Customary routine;
- c. Cognitive patterns;
- d. Communication;
- e. Vision;
- f. Mood and behavior patterns;
- g. Psychosocial well-being;
- h. Physical functioning and structural problems;
- i. Continence;
- j. Disease diagnosis and health conditions;
- k. Dental and nutritional status;
- l. Skin conditions;
- m. Activity pursuit;
- n. Medications;
- o. Special treatments and procedures;
- p. Discharge potential;
- q. Documentation of summary information regarding the additional assessment performed through the resident assessment protocols;
- r. Documentation of participation in assessment.

b. Minimum Data Set (MDS)

The Minimum Data Set (MDS) is the state approved assessment instrument which is the current core set of screening, clinical and functional status elements that forms the foundation of the comprehensive assessment for all residents in nursing facilities.

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PRE-ADMISSION SCREENING, COMPREHENSIVE ASSESSMENTS  
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The MDS must be completed up to, and no later than, fourteen (14) calendar days after the date of admission.

The assessment is conducted or coordinated by a Registered Professional Nurse with participation by other appropriate health professionals. Upon completion, the Registered Professional Nurse must sign, date and certify the completion of the assessment.

Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment..

c. Resident Assessment Protocol (RAPs)

A component of the utilization guidelines, the RAPs are structured, problem-oriented frameworks for organizing MDS information and examining additional clinically relevant information about an individual. RAPs help identify social, medical and psychological problems and form the basis for individualized care planning.

The Resident Assessment Protocols must be completed by the 14th calendar day after the admission, or according to other Federal and State requirements. Upon completion, the Registered Professional Nurse must sign and date the RAP summary sheet.

12.B.2.Frequency of Assessments

a. The annual comprehensive assessment must be completed within twelve (12) months of the most recent full assessment. The annual reassessment may be initiated at any point prior to the end of the 1-year follow-up date, but must be completed by the end of the 365th calendar day after the most recent comprehensive assessment. If a significant change reassessment is completed in the interim, the clock “restarts”, with the next assessment due within 365 days of the significant change reassessment. Routinely scheduled comprehensive assessments may be scheduled early if a facility wants to stagger due dates for assessments.



b. Nursing facilities have an ongoing responsibility to assess resident status and intervene to assist the resident to meet his or her highest practicable level of physical, mental and psychological well-being. If interdisciplinary team members identify a significant change (either improvement or decline) in a resident's condition, they should share this information with the resident's physician, whom they may consult about the permanency of change. The facility's medical director may also be consulted when differences of opinion about a resident's status occur among team members.

Document the initial identification of a significant change in terms of the resident's clinical status in the progress notes. Complete a full comprehensive assessment as soon as needed to provide appropriate care to the individual, but in no case, later than fourteen (14) days after determining that a significant change has occurred

A "significant change" is defined as a major change in the resident's status that:

1. Is not self-limiting. A condition is defined as "self-limiting" when the condition will normally resolve itself without further intervention or by staff implementing standard disease-related clinical interventions;
2. Impacts on more than one area of the resident's health status; and
3. Requires interdisciplinary review or revision of the care plan.

c. If a resident returns to a facility following a temporary absence for hospitalization or therapeutic leave, it is considered a readmission. Facilities are not required to assess a resident if they are readmitted, unless a significant change (as defined in Chapter 12.B.2.b.) in the resident's condition has occurred.

d. The quarterly assessment is used to track resident status between comprehensive assessments, and to ensure monitoring of critical indicators of the gradual onset of significant changes in resident status. At a minimum, three (3) quarterly reviews and one full assessment are required in each 12 month period.

## 12.C. Comprehensive Care Plan

### 12.C.1. Definitions

"Comprehensive Care Plan" is the specific document which has been developed by the multidisciplinary team (including the resident or guardian) to address residents' medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessments. The comprehensive care plan must include measurable objectives and timetables.

Before completion of a comprehensive care plan, there must be evidence of ongoing assessments and care planning to assure care and services are being provided from the date of admission/readmission.

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12.C.2. Each resident shall have an integrated comprehensive care plan that is developed by a multidisciplinary team (including the resident and/or guardian) and which is based on a comprehensive assessment using the MDS resident assessment protocols, the utilization guidelines and other assessments as necessary.

12.C.3. The comprehensive care plan shall be developed by a multidisciplinary team consisting of physician, registered Professional Nurse, and other appropriate staff in conjunction with the resident, resident's family or legal representative as appropriate.

12.C.4. The comprehensive care plan shall be developed within seven (7) days after the completion of the Resident Assessment Protocols and:

- a. is periodically reviewed and revised as necessary by the multidisciplinary team after each assessment and reassessment;
- b. must have measurable goals and timeframes, as appropriate, for the highest practicable level of functioning the resident may achieve;
- c. must accurately reflect the resident's assessment;
- d. must be oriented toward preventing decline in functioning and/or functional levels within the parameters of normal aging and any disease processes which are present;
- e. must address identified risk factors;
- f. must reflect standards of current professional practice.
- g. must reflect a multidisciplinary team approach to maintain or improve functional abilities of the resident.

12.C.5. The comprehensive care plan must be continually and actively implemented by all staff.

12.C.6. The comprehensive care plan must be available at the nurses station for review and implementation as appropriate by staff on each shift. The procedures to implement the care plan need not be included in the care plan, but there must be a format, as chosen by the facility, which provides direction to the resident care staff of each shift.

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12.D. Documentation

12.D.1. There must be ongoing documentation as necessary, but at least monthly, which reflects the resident's condition, implementation and effectiveness of the care plan and interventions by the staff.

12.D.2. There must be documentation by the CNA of the specific tasks carried out to implement the part of the care plan assigned to the CNA.

12.E. Specialized Therapy Services

Based upon the resident's comprehensive assessment, the facility must provide or obtain specialized therapy services, i.e., physical therapy, speech/language therapy, occupational therapy, and mental health services for each resident as needed and prescribed in the plan of care.

12.E.1. Care Plan

a. Based on the resident's comprehensive assessment, these services shall be integrated into the resident's comprehensive multidisciplinary care plan, as necessary.

b. The resident's care plan, progress and continued need for specialized therapy is reevaluated as necessary, and recommendations made to the physician and the multidisciplinary team.

12.E.2. Therapists' Responsibilities

a. Specialized therapy is provided only on written orders of the physician.

b. The therapist shall evaluate each resident referred and recommend a rehabilitative treatment regimen, if appropriate.

c. The therapist, in consultation with the physician, shall initiate the therapy and reevaluate the continuing need for therapy as needed.

d. The therapist shall provide training for staff and supervise the provision of care to assure acceptable level of performance for qualified support personnel.

e. The therapist shall document each treatment and progress noted in the residents' records.

12.E.3. Space and Equipment

a. Space that shall serve the needs of the residents shall be made available for specialized therapies.

b. Equipment necessary for the provision of specialized therapy services shall be available and used as needed.

### 13.A. Quality of Care

Each resident must receive, and the facility must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that are identified in the comprehensive assessment that is in conformance with the current standards of the Gerontological Nursing Practice of the American Nurses Association.

#### 13.A.1. Activities of Daily Living (ADL)

Based on the comprehensive assessment of a resident, the facility must ensure that:

a. A resident's abilities in Activities of Daily Living do not diminish unless circumstances of the resident's clinical condition demonstrate the diminution was unavoidable. This includes the resident's ability to:

1. bathe, dress, and groom;
2. transfer and ambulate;
3. toilet;
4. eat;
5. use speech, language or other functional communication systems; and
6. bed mobility.

b. A resident is given the appropriate treatment and services to maintain or improve his or her abilities to carry out his/her activities of Daily Living.

c. A resident who is unable to carry out Activities of Daily Living receives the necessary services and assistance to meet his/her needs.

d. A resident is given encouragement and assistance to be up and dressed in his/her own personal clothing which is appropriate to the time of day and season, clean, attractive, and in good repair.

#### 13.A.2. Personal Care

Each resident shall receive proper nursing care, as defined by the Standards of Care established by the American Nurses association. These services include, but are not limited to:

a. Good personal hygiene, such as clean, well-groomed hair, cleaned, trimmed fingernails, clean skin, and freedom from offensive odors, clean mouth and teeth, and absence of dry cracked lips;

- b. Appropriate nursing measures including encouraging and assisting resident to change position at least every two (2) hours to stimulate circulation and prevent pressure sores, contractures and deformities.
- c. Ensuring clean resident rooms, beds, bed linen and clothing.
- d. Ensuring that resident care equipment is in sufficient supply, in good condition, properly cleaned and cared for, well organized and readily available.

#### 13.A.3.Mental and Psychosocial Functioning

Based on the comprehensive assessment of a resident, the facility must ensure that:

- a. A resident who displays mental or psychosocial adjustment difficulty receives appropriate treatment and services to correct the assessed problem; and
- b. A resident whose assessment did not reveal a mental or psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

#### 13.A.4.Hydration and Nutrition

The facility must provide each resident with sufficient fluid and nourishment to maintain proper hydration and health.

- a. Based on a resident's comprehensive assessment, the facility must ensure that a resident:
  - 1. Maintains acceptable parameters of nutritional status unless the resident's clinical condition demonstrates that this is not possible; and
  - 2. Receives a therapeutic diet when there is a nutritional problem.
- b. The facility assures that good dietary practices are maintained through the use of self-feeding devices, attention to individual food preferences and knowledge of food intake of individual residents. Residents should be offered the opportunity to choose mealtime companions and these groups should be served their meals simultaneously.
- c. As appropriate, water and other fluids shall be provided and accessible to the resident.
- d. Special eating equipment and utensils must be provided for residents who need them. Syringe feeding may only be done after evaluation by an appropriate professional and according to the plan of care developed by the multidisciplinary team.

#### 13.A.5.Nasogastric and Gastrostomy Tubes

Based on the comprehensive assessment of a resident, the facility must ensure that:

- a. Nasogastric and gastrostomy tubes are not used, unless the resident's clinical condition demonstrates that use of a naso-gastric or gastrostomy tube was unavoidable and that the need for continued use is monitored and justified; and
- b. A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services according to accepted standards of nursing practice.

#### 13.A.6. Vision and Hearing

The facility must ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities. The facility must, if necessary, assist the resident:

- a. In making appointments; and
- b. In arranging for transportation.

#### 13.A.7. Incontinence

Based on the resident's comprehensive assessment, the facility must ensure that:

- a. A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.
- b. A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary.
- c. A bowel and bladder training and management program is initiated when possible.
- d. Any resident with incontinence must be assessed for causal factors for decline, potential for decline or lack of improvement.

#### 13.A.8. Pressure Sores

Based on the comprehensive assessment of a resident, the facility must ensure that:

- a. A resident who enters the facility without pressure sores does not develop pressure sores, unless the resident's clinical condition demonstrates that the pressure sores were unavoidable; and
- b. A resident with pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

#### 13.A.9. Restorative Nursing

Based on the comprehensive assessment of a resident, the facility must ensure that:

- a. A resident who enters the facility does not experience reduction in range of motion, unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and
- b. A resident with a limited range of motion receives appropriate treatment and services to maintain or increase range of motion.
- c. The facility shall have an active program of rehabilitation directed towards assisting each resident to achieve or maintain an optimum level of self-care and independence.
- d. The following minimum restorative nursing interventions shall be included in the comprehensive care plans as needed:
  - 1. Assistance in maintaining current level of function and adjustment to disabilities;
  - 2. Assistance in carrying out prescribed exercises;
  - 3. Provision of out-of-bed activities as tolerated;
  - 4. Education and encouragement in achieving independence in Activities of Daily Living.

13.A.10. Accidents

The facility must ensure that:

- a. The resident environment remains as free of accident hazards as is possible; and
- b. Each resident receives adequate supervision and assistance devices to prevent accidents.

13.A.11. Special Services

The facility must ensure that residents receive proper treatment and care for the following special services:

- a. Injections;
- b. Parenteral and enteral fluids;
- c. Colostomy, ureterostomy or ileostomy care;
- d. Tracheostomy care;
- e. Tracheal suctioning;
- f. Respiratory care;
- g. Foot care; and
- h. Prostheses

13.A.12. Laboratory Services

The facility shall have policies and procedures which:

- a. List the laboratory services being performed within the facility;
- b. Ensure that the necessary certification is received under the Clinical Laboratory Improvement Amendments of 1988; and
- c. Outline procedures for obtaining tests from outside laboratories.



14.A. Social Services

The facility must provide social services to attain or maintain the highest practicable physical, mental or psychosocial well-being of each resident and address associated family issues. Social services shall be provided in accordance with clearly defined written policies and procedures. The facility shall have written policies and procedures for obtaining social services from appropriate community resources, when a resident requires services that the facility staff is not able to provide.

14.A.1.Social Services Staff

Social services will be provided by social workers holding current and valid licenses as required by State law.

14.A.2.Staff Hours

Facilities shall employ social services staff at a minimum ratio of 1/2 hour, per resident, per week.

14.A.3.Administrative Support

The facility shall provide office space for the provision of social services. This space shall be accessible to residents and shall afford privacy for discussion with residents and/or families. Social services staff shall receive sufficient administrative support to function effectively.

14.A.4.Responsibilities for Social Services Staff

- a. Obtaining the psychosocial history and participating in the comprehensive assessment and development of the care plan by the multidisciplinary team (MDT).
- b. Participating in the assessment of the resident on a quarterly basis or when there is a significant change in the resident's status.
- c. Planning and coordinating discharge planning as directed by the MDT.
- d. Assisting the resident and family with discharge plans, including an evaluation of the environment to which the resident will transfer, and referring to appropriate supportive services.
- e. Assuring that a resident who displays psychosocial adjustment difficulty receives appropriate treatment and services to achieve as much remotivation and reorientation as possible.
- f. Making subsequent visits in a timely manner in order to identify the resident's medically related social and emotional needs and to provide ongoing services, as needed.
- g. Maintaining contact with the resident's family and involving them in the resident's care, as appropriate.

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### SOCIAL SERVICES

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- h. Maintaining contact with other staff members relative to the resident's needs, and sharing pertinent information.
- i. Advocating for the rights of the resident and the resident's family.
- j. Arranging and coordinating supportive community services as needed.
- k. Preparing and maintaining progress notes as needed, but at least quarterly if problems are identified on the care plan in which the social worker is involved.
- l. Recording of significant events, interventions with, or on the behalf of, the resident, discharge planning efforts and referrals made to other agencies or community resources.

## CHAPTER 15

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### ACTIVITIES

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15.A. The facility must provide for an ongoing program of activities designed to meet the interests and the physical, mental and psychosocial well-being of each resident in accordance with the comprehensive assessment.

#### 15.A.1. Activities Coordinator

The Activities Coordinator shall be qualified by training or experience as evidenced by:

- a. Having completed, or is currently enrolled in a training course approved by the Department of Education; or
- b. Having completed an approved course prior to July 1, 1994; or
- c. Is a registered occupational therapist or an occupational therapy assistant; or
- d. Is a qualified therapeutic recreation specialist.

#### 15.A.2. Staffing Hours

a. The Activities Coordinator's hours per week and those of the Assistant Activities Coordinator, if applicable, are in accordance with bed capacity as follows:

0-30 beds = 20 hours per week	91-120 Beds = 60 hours per week
31-60 beds = 30 hours per week	121-150 Beds = 70 hours per week
61-90 beds = 40 hours per week	151-180 Beds = 80 hours per week

b. Activities staff hours are included in the total direct care staff hours. The facility is responsible for establishing its own staffing patterns within the approved hours and assigning the staff according to the needs of the residents.

#### 15.A.3. Responsibilities

The Activities Coordinator shall be responsible for the following:

- a. Participating in the comprehensive assessments and development of the care plan by the multidisciplinary team.
- b. Participating in the multidisciplinary team, review and revision of the plan of care at least quarterly.
- c. Writing progress notes at least quarterly for those residents with problems identified on the plan of Care in which the Activities Coordinator is involved.
- d. Keeping individual records as prescribed by the plan of care.
- e. Planning, coordinating and encouraging individual and group activities during both day and evening hours, based on the comprehensive assessment of each resident's needs and interests.

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### ACTIVITIES

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f. Maintaining a monthly calendar of planned activities which is posted in a prominent place and is easily readable by all residents.

g. Encouraging residents who are unable or who choose not to leave their rooms to participate in individual and group activities.

#### 15.A.4.Activities Staff

The Activities Coordinator should actively recruit volunteers from the community. The Activities Coordinator may be assisted by supportive resource personnel such as the activities assistant, administrative and nursing staff, and volunteers from the community.

#### 15.A.5.Activities Equipment and Supplies

Each facility shall provide equipment and supplies as recommended by the Activities Coordinator to fulfill the planned program.

#### 15.A.6.Activities Areas

The living or recreation and dining room areas may be used for activities. Outside areas accessible to the residents shall be provided and utilized for suitable activities.

#### 15.A.7.Community Activities

Transportation shall be provided or arranged by the facility for the residents' participation in facility planned community based activities.

## CHAPTER 16

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### PHYSICIAN SERVICES

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#### 16.A. Physician Services

Each resident must be under the care of a physician.

16.A.1. A physician must personally approve, in writing, the recommendation that an individual be admitted to a nursing facility.

16.A.2. A physical examination, a copy of which must be in the resident's clinical record, must have been performed five (5) days prior to or within seven (7) days of admission.

16.A.3. The admitting physician must participate in the initial and ongoing medical evaluation and care planning of the resident.

16.A.4. The admitting physician must ensure that another physician supervises the medical care of residents, when the attending physician is unavailable.

16.A.5. The physician must visit the resident and review the resident's total program of care including medications and treatments as needed, at least once every thirty (30) days for the first ninety (90) days and every sixty (60) days thereafter. A grace period of ten (10) days may be allowed for the resident whose condition during this period of time did not require medical attention.

16.A.6. Orders concerning medications and treatments shall be in writing, signed and dated by a physician and shall be in effect for the time specified by the physician, but in no case to exceed a period of sixty (60) days unless there is a written reorder. A grace period of ten (10) days may be allowed for the resident whose condition did not require a review and reorders during this period of time.

16.A.7. Orders for Schedule II controlled substances shall be in effect for no longer than one (1) week, unless there are specific written orders to the contrary. In no case shall the order be in effect for a period of more than thirty (30) days.

16.A.8. At the option of the physician, required visits, after the initial visit, may alternate between personal visits by the physician and visits by a physician's assistant, nurse practitioner or clinical nurse specialist who meets the applicable definition, acts within the scope of State law, and is under the supervision of the physician.

16.A.9. At each visit, the physician, physician's assistant, nurse practitioner or clinical nurse specialist must write, sign, and date progress notes.

## CHAPTER 16

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### PHYSICIAN SERVICES

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#### 16.A.10. Availability of Physician for Emergency Care

The facility must provide or arrange for the provision of physician services twenty-four (24) hours a day, in case of an emergency.

#### 16.A.11. Medical Director

- a. There shall be a medical director who is responsible for the medical direction and coordination of medical care in the facility.
- b. The duties, responsibilities and availability of the medical director, and the terms of agreement, shall be delineated in writing. The agreement shall be signed by the physician serving as medical director and by an authorized representative of the facility.
- c. The medical director is responsible for the:
  1. Overall coordination of medical care;
  2. Liaison with attending physicians;
  3. Participation in the Quality Assurance Committee and the Professional Policy Committee.

## CHAPTER 17

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### PHARMACEUTICAL SERVICES

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#### 17.A. Pharmaceutical Services

Pharmaceutical services shall be conducted in accordance with currently accepted professional standards of practice and in accordance with all applicable laws and regulations.

Facilities shall develop policies and procedures for the prescribing (including standing orders), obtaining, dispensing, administering, controlling, storing, and disposing of all drugs and biologicals with the advice of a staff pharmacist or a consultant pharmacist and approved by the professional policy group.

#### 17.B. Definitions

17.B.1. Adverse Drug Reaction - is any undesired or unintended effect of a medication, to include:

- a. Hypersensitivity or allergic reactions: a reaction due to a patient's immune response,
- b. Idiosyncrasy: a susceptibility or sensitivity peculiar to a rare phenotype (extreme sensitivity to low doses),
- c. Toxicity: a "poisoning" due to overdosage or accumulation,
- d. Side Effect: an undesired pharmacologic effect which is predictable.

17.B.2. Psychoactive Drugs or Agents - As defined in medical literature, are medications subdivided into five (5) therapeutic classes:

- a. Long-lasting Benzodiazepine drugs;
- b. Benzodiazepine or other anxiolytic sedative drugs;
- c. Drugs for sleep induction;
- d. Antipsychotic drugs;
- e. Antidepressant drugs.

17.B.3. Unnecessary Drug - is any drug that is used in excessive doses, for excessive periods of time, without adequate monitoring, without an appropriate diagnosis or reason for the drug, used in the presence of adverse reactions which indicate that the drug should be reduced or discontinued entirely, and any combination of the above reasons.

#### 17.C. Supervision of Drugs and Biologicals

17.C.1. Each facility shall have a State licensed Pharmacist as a consultant.

## CHAPTER 17

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### PHARMACEUTICAL SERVICES

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#### 17.C.2. Responsibilities of the Pharmacist Consultant:

- a. Assists with the development of written policies and procedures for pharmaceutical services.
- b. Reviews medication storage areas for, but not limited to, labeling, storage, ventilation, humidity and temperature control, expired medications, security, sanitation and completeness of emergency medications box. (See Chapter 17.I.4.)
- c. Determines that drug records are in order and that an account of controlled drugs is maintained and reconciled.
- d. Monitors adherence to stop order and standing order policies.
- e. Evaluates staff performance in carrying out pharmaceutical policies and procedures.
- f. Reviews the drug regimen of each resident monthly and as needed, including monitoring for unnecessary drugs.
- g. Provides the professional staff with in-service education and on-going communication regarding drugs and biologicals, including information on drug incompatibilities, new drugs, drug sensitivities, and drug interactions.
- h. Participates in resident care conference as appropriate.
- i. Participates in the Professional Policy Committee and Quality Assurance Committee meetings to review and make recommendations relating to pharmaceutical services.

#### 17.C.3. Reports of the Pharmacist Consultant shall contain:

- a. Documentation in the resident's record that review of the medication regimen has been performed and that issues and irregularities identified have been reported to the Director of Nursing and the attending physician.
- b. A description of all activities, findings and recommendations contained in a report submitted to the Director of Nursing and the Administrator.



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PHARMACEUTICAL SERVICES

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17.D. Handling of Drugs and Biologicals

17.D.1. All medications shall be kept in their original containers unless transfer of the medication is done to another storage container by or under the supervision of a pharmacist or a physician. All pharmaceutical containers having soiled, damaged, incomplete, illegible or makeshift labels shall be returned to the issuing pharmacy for relabeling or shall be destroyed in accordance with 17.D.8. of this section.

17.D.2. Each resident's medication container shall be clearly labeled in accordance with State and Federal law and shall include:

- a. Prescription number;
- b. Resident's full name;
- c. The name, strength and dosage form of the drug;
- d. Current directions for use;
- e. Name of prescribing physician;
- f. Name, address and telephone number of the pharmacy issuing the drug;
- g. Date of issue (latest refill);
- h. Expiration date, not to exceed one (1) year from the date of repackaging or dispensing or the manufacturer's original date, whichever is earlier;
- i. Appropriate accessory and cautionary instructions.

17.D.3. There shall be a physical barrier between medications marked "for external use only" and any medication to be taken internally. There shall also be a physical barrier separating eye medications, ear medications and topical medications.

17.D.4. The telephone number of the Poison Control Center shall be conspicuously posted near the telephone at each nurses station.

17.D.5. All drugs and biologicals shall be stored in locked rooms or compartments, separate from food and laboratory specimens, and under proper temperature control in accordance with United States Pharmacopeia standards:

- a. Refrigeration: 36-46 degrees Fahrenheit
- b. Cool 46-59 degrees Fahrenheit
- c. Controlled Room Temperature 59-86 degrees Fahrenheit

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17.D.6. Medications which have an expiration date that has been exceeded shall be removed from use and properly disposed of, according to requirements (17.D.8.).

17.D.7. All prescribed medicines are the property of the resident. Upon discharge of a living resident from a licensed facility, the prescribed medicine, including controlled drugs or substances may be released with the resident, but only upon written authorization of the resident's physician. Each drug release will be documented in the resident's record. Subsequent to discharge, unclaimed medications shall be retained no longer than ninety (90) days.

#### 17.D.8. Disposition of Medications

- a. All prescribed medications, other than Schedule II controlled substances, shall be destroyed by the Director of Nursing Service or a designee, and shall be witnessed by a licensed member of the nursing staff.
- b. The destruction shall be conducted in such a manner as to prevent any persons from being able to use, administer, sell or give away the medication.
- c. Individual unit doses, other than Schedule II through V controlled substances must be returned to the pharmacist and any credit or rebate made to person(s) who originally paid for the medication.
- d. Amounts destroyed or returned to the pharmacy shall be recorded on the resident's record with the signature of two (2) witnesses.
- e. Following the death of the resident, medications shall be removed from circulation within seventy-two (72) hours.
- f. Schedule II controlled substances shall be disposed of as outlined in Section 17.F.2. of this Chapter.

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17.D.9. Licensed facilities may stock in bulk supply those items and drugs regularly available at a pharmacy without prescription.

#### 17.D.10. Reporting of Tampered With or Stolen Drugs

The Department and the Attorney General shall be notified verbally within seventy-two (72) hours when there is suspicion that a medication has been tampered with or stolen. A written report shall also be submitted by the facility to both agencies.

17.D.11. A record shall be maintained, in which the following information shall be available for all prescription medications received in the facility:

- a. Name of resident for whom received;
- b. Name of pharmacy;
- c. Prescription number;
- d. Name of drug and strength;
- e. Amount of medication received;
- f. Date received;
- g. Signature of licensed person receiving the medication.

17.D.12. All resident Schedule II controlled substances received in the facility shall be listed as received in a bound book from which no pages shall be removed

17.D.13. A separate emergency supply inventory, which is the property of the provider pharmacy, shall also be maintained with the following record requirements:

Receiving:

- a. Date received
- b. Name of the nurse receiving
- c. Name, strength and dosage form of the medication
- d. Amount received

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- a. Date used
- b. Nurse administering
- c. Patient's name
- d. Amount used
- e. Amount remaining

These records shall be duplicated and kept as a permanent part of the facility records. The originals remain the property of the pharmacy, as does the medication.

17.D.14. A medication supply shall not be maintained by a resident, unless requested by the resident and specifically authorized by the resident's physician and the multidisciplinary team.

#### 17.E. Administration

17.E.1. Medications shall be administered as prescribed and according to a clearly defined procedural system and reconciled with the physician's orders on a regular basis.

#### 17.E.2. Orders for Medication

- a. All medications administered to residents shall be ordered in writing by the resident's physician or authorized designee. Oral orders for medications shall be accepted only by a licensed nurse or pharmacist, immediately reduced to writing, signed by the person accepting the order and countersigned by the attending physician within five (5) business days.
- b. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with written stop order policy approved by the physician or physicians responsible for advising the facility on its written policies. The resident's physician shall be notified prior to any discontinuance of medication.
- c. Orders concerning medications and treatments shall be in writing, signed and dated by a physician and shall be in effect for the time specified by the physician, but not to exceed a period of sixty (60) days. A grace period of ten (10) days may be allowed for the resident whose condition during this period of time did not require a physician's visit.
- d. Orders for Schedule II controlled substances shall be in effect for no longer than one (1) week, unless there are specific written orders to the contrary, but in no case shall the order be in effect for a period of more than thirty (30) days without a reorder.

#### 17.E.3. Personnel Administering Medication

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- a. All medications shall be administered by medical and nursing personnel in accordance with the Nurse Practice Act of Maine and applicable law.
- b. All medications shall be administered by licensed medical or nursing personnel, Certified Nursing Assistant/Medications, or other individuals authorized by law who have been issued a certificate indicating completion of an advanced training program including the administration of oral medications as approved by the Maine State Board of Nursing.
- c. Medications which are prescribed to be given as needed must only be administered after an evaluation of the resident by a licensed nurse or physician.
- d. Medications shall be administered as soon as possible after doses are prepared by the same person who prepared the medication for administration.

#### 17.E.4. Medication Identification

The facility must have an organized system for drug administration that identifies each drug up to the point of administration.

#### 17.E.5. Resident Identification

There shall be provision for assuring proper identification of residents by all personnel administering medications.

#### 17.E.6. Self-Administration of Medications

An individual may self-administer medications if the multidisciplinary team has determined that the practice is safe, and with the written permission of the resident's attending physician.

#### 17.F. Control of Narcotics, Barbiturates and Other Controlled Substances

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#### 17.F.1 Policies and Procedures

- a. All facilities shall comply with State and Federal regulations governing narcotics and those drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, and any amendments thereto.
- b. For purposes of this section, narcotics, barbiturates and other controlled substances shall include any substance listed under the Federal Uniform Controlled Substance Act, Sections 1 through 5.
- c. All Schedule II controlled substances, including the emergency supply, received in the facility shall be recorded in a bound drug book as specified in this Chapter. Whenever a container of Schedule II controlled substances has been used up, as evidenced by the record required in this Chapter, it shall be noted in the bound drug order book by signature and date that the supply is depleted.
- d. For all substances listed in Schedule II as above, there shall be an individual narcotic sheet on which shall be recorded the name of the resident receiving the substance, prescription number, the name, date, strength, dosage, and method of administration, the name of the prescribing physician, the signature of the nurse administering it and the balance on hand. This record shall be filed in the individual resident's record upon completion.
- e. The emergency supply inventory shall name the resident for whom the controlled substance was issued, the name of the physician, and the date issued, signed by the nurse issuing the medication and the nurse receiving the medication.
- f. The count of Schedule II controlled substances, to include the emergency supply, shall be recorded and signed at the change of each shift by two people qualified to administer medications, one of whom shall be a licensed nurse.
- g. All Schedule II controlled substances, including the emergency supply, shall be stored under double lock, in a locked box attached to the wall or shelf or locked cabinet within the medication cabinet or cart, or an approved double locked cabinet attached to the wall.
- h. Policies shall be developed relative to the accounting of controlled substances other than Schedule II.

#### 17.F.2. Handling of Unused Schedule II Controlled Substances

- a. The Director of Nursing Services, or a designee, shall list all such unused substances, tape the cap or cover with tamper evident seals and keep the same in a secure, double-locked area, apart from all other drugs. The drugs shall be accessible only to the Director of Nursing or designee.
- b. A current inventory of these substances shall be maintained and recorded in a monthly inventory recorded by the Director of Nursing and one other licensed nurse. These inventories must be maintained for a period of at least five (5) years or as required under Federal/State statutes.

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c. Prior to the destruction of these substances by the authorized person, the inventory shall be verified by that person. Notation shall be made of the destruction, date and signed by all authorized individuals.

d. Disposal of such substances shall occur by incineration or by flushing into the sewage system and shall be made in the presence of a representative from the Department, a Maine licensed pharmacist, a member of the Board of Pharmacy who is a licensed pharmacist, or Federal Drug Enforcement Agency agent. At least one party must be a disinterested party. For the purposes of this section, a disinterested party shall be considered to be either a nurse who was not the last nurse to inventory the discarded item or a pharmacist who is not affiliated with the provider who dispensed the drug.

e. For Schedule II controlled substances, notation of such destruction shall be made on the inventory list required in 17.F.2.b. For Schedule II substances, notation of such destruction shall also be made on the residents individual Schedule II controlled drug sheet, signed and dated by the person who disposed of the drug and the authorized person witnessing the disposition. For Schedule II substances, notation of such destruction shall be made in the bound book required in Chapter 17.F.1.c.

#### 17.G. Recording of Medications

##### 17.G.1. Records of Administration

A record shall be kept of all drugs and medications administered, including name of drug, dose form, dosage, and time given. This shall be promptly recorded on the record of medications and treatment, initialed by the administering individual, with the full name of the individual written somewhere on such record. The need for and response to medications administered which were prescribed to be given as needed shall be documented on the medication or clinical record.

##### 17.G.2. Record of Time Started, Given or Discontinued

Entries shall be made on the medication records to indicate whenever medications are started, given, or discontinued.

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#### 17.H. Reporting of Medication Errors and Adverse Reactions

##### 17.H.1. Reports to Physician

Medication errors and adverse reactions shall be immediately reported to the resident's physician. Medication errors include omissions, as well as errors of commission. Adverse reactions shall also be reported to the pharmacist consultant and pharmacy.

##### 17.H.2. Clinical Records

An entry of the error and/or adverse reaction shall be made in the resident clinical record.

##### 17.H.3. Incident Reports

There shall be an incident report made out for each medication error and/or adverse reaction. These reports shall be kept together on the premises of the facility, reviewed by the Quality Assurance Committee and be made available for review by representatives of the Department.

#### 17.I. Equipment and Supplies

##### 17.I.1. Medicine Cabinet

A cabinet or medication cart shall be provided for individual prescriptions. The cabinet/cart shall be of sufficient size, properly lighted, and located where easily accessible and locked when not in use. The medicine cabinet/cart shall be equipped with separate cubicles, plainly labeled, or provided with other physical separation for the storage of each resident's prescriptions.

##### 17.I.2. Medicine Measuring Devices

Appropriate measuring devices for the accurate measure of liquid medications shall be provided. If not disposable, these medicine containers shall be returned to the institution's dishwashing unit for processing after each use.

##### 17.I.3. Cabinets for Cleaning Supplies and Poisons

There shall be a separate secure cabinet apart from medicine, drugs, and food, for the storage of all bleaches, detergents, disinfectants, insecticide, and poisons. These shall be clearly labeled.



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#### 17.I.4. Emergency Medication Box

There shall be readily available in a secure area, an emergency medication box approved by the facility's group of professional personnel. All medication shall be in single dose form, if available, and any drug removed from the kit shall be replaced within 24 hours and have a drug prescription to cover replacement of same within 5-7 days. An adequate inventory level shall be maintained to assure that a supply is available.

#### 17.I.5. Reference Material

There shall be, readily available to all staff, current (within two [2] years) medication reference material and up-to-date information for all medications in use in the facility.

#### 17.I.6. First Aid Kit

There shall be a first aid kit which is OSHA approved and equipped as facility policy dictates, readily available at each nurses station.

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#### 18.A. Policies and Procedures

18.A.1. Dietetic services shall be described in the facility's policy and procedure manual with at least the following:

- a. Organization and dietetic services offered;
- b. Personnel management;
- c. Staffing and budgeting;
- d. orientation and inservice education;
- e. Menu planning;
- f. Therapeutic diets;
- g. Resident clinical nutritional care;
- h. Purchasing, receiving, and storing of food and supplies;
- i. Food preparation and service;
- j. Meal and nourishment service;
- k. Safety, sanitation, and infection control;
- l. Time parameters for storage of opened or leftover foods; and
- m. Disaster feeding plan.

18.A.2. Dietetic services will be represented in the professional policy group.

#### 18.B. Staffing

18.B.1. There shall be sufficient numbers of adequately trained staff to carry out the functions of dietetic services and to meet the dietary needs of residents.

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#### 18.B.2. Health and Hygiene

- a. No person, while infected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or any acute gastrointestinal disease or other infection deemed to be transmissible through food, shall work in dietetic services in any 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.
- b. Staff shall maintain a high degree of personal cleanliness and shall practice hygienic food-handling techniques.
- c. All staff shall thoroughly wash their hands and wrist areas with soap and warm water before starting work and after any absence from the work station, and shall wash hands during work hours as often as may be necessary to remove soil and contamination. Fingernails shall be kept clean and trimmed.
- d. Staff shall wear clean outer clothing and aprons. Hair shall effectively be restrained through the use of nets or other clean hair covering.

#### 18.B.3. Food Service Supervisor

There shall be a full-time employee who meets the definition of a qualified Food Service Supervisor (Dietetic Service Supervisor) assigned the overall responsibility for dietetic service.

#### 18.B.4. A Food Service Supervisor (Dietetic Service Supervisor) is a person who:

- a. Is a qualified dietitian; or
- b. Is a graduate of a dietetic technician program, approved by the American Dietetic Association; or is a graduate of the Dietary Managers Association approved course and has passed the Certifying Board for Dietary Managers credentialing exam; or
- c. Is a graduate of a State-approved course in food service supervision; or
- d. Has training and experience in food service supervision and management in a military service, equivalent to the requirements in (b) or (c) above.

Responsibilities of the Food Service Supervisor shall include performance, supervision or approval of the following:

- a. Administration
  1. Orientation and training for all staff on hygiene practices, with emphasis on handwashing techniques, food preparation, storage, handling and sanitation;
  2. Establishing work schedules and assignments for all staff;

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3. Participating in development and review of dietary service policies and procedures;
  4. Participating in planning and conducting in-service education for dietetic, nursing and other staff, as needed; and
  5. Menu planning and ordering of food and supplies.
- b. Resident Services
1. Interviewing all new residents regarding food preferences and maintaining records of pertinent nutrition information;
  2. Participating in patient care planning conferences when indicated;
  3. Reporting to the nursing staff and/or consultant dietitian, and documenting, as necessary, significant observations and resident responses to dietary plans of care; and
  4. Documenting, as necessary, in residents' medical records the nutritional care delivered, with guidance from consultant dietitian.
- c. Preparation, Service and Sanitation
1. Supervising preparation and service of all food including monitoring food temperatures and reviewing residents' meal trays for compliance with the prescribed diet;
  2. Monitoring food storage in all areas of the facility including stock rotation, inventory control, and proper packaging, labeling and dating of food; and
  3. Assuring that proper sanitation procedures are implemented in the kitchen and warewashing areas and all other areas in the facility where food is stored, prepared and served.

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#### 18.B.5. Dietitian

If the nursing facility does not employ a Registered Dietitian, there must be a written agreement with a Registered Dietitian currently licensed to practice in the State of Maine to provide consultation.

#### 18.B.6. Responsibilities of Consultant Registered Dietitian

Responsibilities shall include:

- a. Preparing reports for the administrator at least monthly, reflecting all activities and recommendations;
- b. Evaluating the functions of the dietetic services, identifying strengths, weaknesses and priorities;
- c. Participating in the development and revision of policies and procedures;
- d. Reviewing and approving all menus, including therapeutic diets, to ensure nutritional adequacy and conformity to physician diet orders;
- e. Counseling residents and/or family members when appropriate;
- f. Documenting pertinent information regarding residents' nutritional care and status in medical record, as necessary;
- g. Participating in the assessment of residents and in patient care planning conferences as needed;
- h. Planning, with Food Service Supervisor, inservice education programs for dietetic employees at least quarterly. Providing inservice for other staff as needed and requested; and
- i. Participating in residents' discharge planning as indicated by residents' needs.

#### 18.C. Adequacy of Diets

The facility must provide each resident with 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, adjusted for age, sex, and activity.

18.C.1. The minimum daily food requirements for adults shall be based on the following:

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- a. Milk and milk products: Two or more eight ounce cups of milk or food containing the calcium equivalent of fluid milk shall be offered daily. A portion of this amount may be served in a cooked form such as milk-based chowders.
- b. Meat, fish, poultry, and alternatives: A minimum total of five ounces of good quality protein food shall be offered at two or more meals. The evening meal shall include a minimum of two ounces of good quality protein food.
- c. Fruits and vegetables: Five or more servings per day including a good food(s) source of vitamin C daily and a good food source of vitamin A at least four times weekly. Fruit flavored beverages with or without vitamins added shall not be considered a fulfillment of these requirements.
- d. Grain group: Six or more servings daily of breads, cereals, and other grain products made from whole grain, fortified or enriched grains.
- e. Other nourishing foods and beverages to meet individual diet requirements or preferences as necessary.

#### 18.C.2. Nourishments and Snacks

- a. Between-meal and bedtime snacks or nourishments shall be planned, scheduled, and offered routinely or upon request to all residents, except when contraindicated for medical reasons.
- b. When the kitchen is not open at all times, a nourishment station shall be provided and supplied.

#### 18.D. Menus

18.D.1. Menus shall be planned and written in a minimum three week cycle and adjusted to include fresh foods in season.

18.D.2. Menus shall be dated.

18.D.3. Daily menus shall provide for a sufficient variety of foods, and no menu for a lunch or dinner shall be repeated within seven days.

18.D.4. Menus shall be served as planned and substitutions shall be consistent with the Recommended Dietary Allowances. Changes shall be recorded and reviewed by the dietitian at the next visit.

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18.D.5. Menus shall be planned ahead and food supplies maintained so that a nutritionally adequate alternate meal can be provided at all times.

18.D.6. The current menu plan shall be posted conspicuously and be readable by personnel, residents and dietetic services staff.

#### 18.E. Therapeutic Diets

18.E.1. Facilities with residents in need of therapeutic diets shall provide for such diets as prescribed by the attending physician.

18.E.2. Therapeutic diets and menus shall be planned, prepared, and served with consultation from a dietitian.

18.E.3. Staff responsible for serving therapeutic diets shall have guidelines and knowledge of food values to make appropriate substitutions when necessary.

18.E.4. A diet manual, not more than five years old, shall be approved by the professional policy group. Copies shall be readily available to attending physicians, nursing and dietetic services staff.

#### 18.F. Food Supplies

18.F.1. Supplies of staple foods for a minimum of a one-week period and of perishable foods for a minimum of 48 hours to meet the requirements of the planned menu shall be kept on the premises at all times.

18.F.2. Records of all food purchased shall be retained by the facility for three years.

18.F.3. The facility must procure food from sources approved or considered satisfactory by Federal, State or local authorities. The use of second grade or outdated products, unlabeled canned goods, railroad salvage, and similar foods is prohibited.

18.F.4. Hermetically sealed food shall be obtained from a regulated food processing establishment.

18.F.5. Fluid milk and fluid milk products used or served shall be pasteurized.

18.F.6. Milk served to residents for drinking shall be served in the following manner:

- a. In an original single serving container; or
- b. From the original container to the residents' glass at meal time; or
- c. The glass filled at meal time from a sanitary bulk milk dispenser.

18.F.7. No reconstituted powdered milk or evaporated milk shall be served for drinking.

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18.F.8. Dry powdered or evaporated milk may be used in cooking or may be added to milk from the dairy as a high protein supplement.

18.F.9. Only clean whole eggs, with shell intact and without cracks or checks; or pasteurized liquid, frozen or dry eggs or pasteurized dry egg products shall be used. Hard-boiled, peeled eggs, commercially prepared and packaged, may be used. Eggs shall be refrigerated at all times and no raw eggs shall be used in uncooked products.

18.F.10. Fresh and frozen shucked shellfish (oysters, clams or mussels) shall be obtained in non-returnable packages legibly bearing the processor's name, address and authorized certification number.

18.F.11. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used.

18.F.12. Sulfites may not be added to raw or cooked fruits or vegetables, nor monosodium glutamate added to any food prepared in the facility.

#### 18.G. Food Storage and Protection

18.G.1. Food shall be stored, prepared, served, transported, and distributed with protection at all times from potential contamination including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, leakage and condensation.

18.G.2. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean and sanitized container and be labeled and dated.

18.G.3. Only containers specifically made for food storage shall be used. They shall be in good condition and maintain the safety and integrity of the contents.

18.G.4. Containers of food shall be stored at least six inches above the floor, on clean racks, dollies or other clean surfaces, in such a manner as to be protected from splash and other contamination.

18.G.5. Poisonous and toxic materials shall be labeled and stored in a secured area separate from food, food preparation areas, and clean equipment and utensil storage.

18.G.6. Food not subject to further washing or cooking before serving shall be protected against contamination from food requiring washing or cooking.

18.G.7. Hermetically sealed cans once opened shall not be used for storage of food. Exception: Shell stock and shucked shellfish shall be kept in the original container in which they were received until they are used. Hermetically sealed packages shall be handled so as to maintain product and container integrity.



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18.G.8. Unserved foods from previously prepared menus must be discarded after thirty-six (36) hours. Foods that may be frozen safely, such as meat, may be frozen, retained and used according to accepted timeframes for such processes.

18.G.9. Food shall not be stored with drugs or laboratory specimens.

18.G.10. All dented cans of food must be removed from the food storage area and may not be used for resident consumption.

#### 18.H. Refrigerator and Freezer

18.H.1. A thermometer accurate to +3 degrees Fahrenheit shall be located inside each refrigerator, freezer, or other storage space used for potentially hazardous food(s).

18.H.2. Enough conveniently located refrigeration facilities shall be provided to assure that all food is stored at required temperatures.

18.H.3. The maximum temperature for the refrigerated storage of all perishable and potentially hazardous food and fluids shall be 41 degrees Fahrenheit or below.

18.H.4. Potentially hazardous food shall be cooled from 140 degrees Fahrenheit to 70 degrees Fahrenheit within two hours and from 70 degrees Fahrenheit to 41 degrees Fahrenheit within an additional four hours.

18.H.5. Frozen food shall be kept frozen and shall be stored at a temperature of 0 degrees Fahrenheit or below.

#### 18.I. Hot Food Storage

Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature of 140 degrees Fahrenheit or above during storage and meal service.

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#### 18.J. Food Preparation

18.J.1. Hands shall be washed prior to any food preparation, whether or not disposable gloves are used. Hands shall be washed every time they become contaminated and after gloves are removed.

18.J.2. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance.

18.J.3. Standardized recipes that list clear descriptive procedures, portion yield and measures, shall be maintained and utilized and shall correspond to items on the posted menus.

18.J.4. Foods shall be cut, chopped or ground to meet individual needs.

18.J.5. Convenient and suitable serving and cooking utensils, such as forks, knives, tongs, spoons and scoops shall be provided and used to minimize direct manual contact with food at all points, where food is prepared.

18.J.6. Food shall be prepared on surfaces that have been cleaned and sanitized to prevent cross-contamination.

18.J.7. All raw fruits and vegetables shall be thoroughly washed to remove soil and other contaminants before being cut, combined with other ingredients, cooked or served.

18.J.8. Potentially hazardous frozen foods shall be thawed as follows:

- a. Under refrigeration at a temperature not to exceed 41 degrees Fahrenheit; or
- b. Under potable running water of a temperature of 70 degrees Fahrenheit, or below, with sufficient water velocity to agitate and float off loose particles into the overflow and for a period not to exceed that needed to thaw the products; or
- c. As part of a continuous cooking process using a microwave oven, a conventional cooking unit or a combination of cooking equipment.

18.J.9. All potentially hazardous food shall be kept at an internal temperature of 41 degrees Fahrenheit or below or at an internal temperature of 140 degrees Fahrenheit or above during service.

18.J.10. Potentially hazardous food that has been cooked and then refrigerated, and which is reheated for hot holding shall be reheated rapidly to 165 degrees Fahrenheit, or higher before being served or before being placed in a hot storage food facility.

18.J.11. Poultry, poultry products, pork, pork products, and stuffing containing raw poultry or pork shall be cooked to heat all parts of the food to 165 degrees Fahrenheit, or above.

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18.J.12. Potentially hazardous ingredients such as mayonnaise and dairy products for foods that are in a form to be consumed without further cooking such as salads, sandwiches, filled pastry products and reconstituted foods shall have been chilled to 41 degrees Fahrenheit or below prior to preparation.

#### 18.K. Food Service

18.K.1. Equipment shall be provided and procedures established to maintain food at safe temperatures during tray assembly. Hot foods shall leave the kitchen above 140 degrees Fahrenheit and cold food below 41 degrees Fahrenheit. Hot foods shall be hot and cold foods cold when they reach the resident.

18.K.2. During transportation, including transportation to another location for service, food and food utensils shall be protected from contamination.

18.K.3. At least three meals that are nutritious and suited to special needs of residents shall be served daily, at regular times comparable to normal meal times in the community. This schedule must be modified if necessary to accommodate the individual needs of residents. If a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day, if a resident group agrees to this meal span, and a nourishing snack is served. A "nourishing snack" is defined as an offering of items, single or in combination, from the basic food groups. Adequacy of the "nourishing snack" will be determined both by resident interviews and by evaluation of the overall nutritional status of residents in the facility (e.g., Is the offered snack usually satisfying?).

18.K.4. Food shall be palatable and attractively served in appropriate portions and in a form designed to meet individual needs.

18.K.5. Substitutes of similar nutritive value shall be offered if a resident refuses food served.

18.K.6. Service at a table in a dining area, other than a bedroom, shall be encouraged for all who can and will eat at a table, including wheelchair residents.

18.K.7. All residents seated at the same table shall be served at the same time.

18.K.8. Food shall be served on dishes and shall not be in direct contact with trays.

18.K.9. Trays, when used, shall rest on firm supports such as overbed tables for bedfast residents. Sturdy tables of proper height shall be provided for residents able to be out of bed.

18.K.10. Residents needing special equipment, implements, or utensils to assist them with eating, shall have such items provided.

18.K.11. Employees and guests eating meals and snacks shall do so in an area separate from the food preparation, tray service, and dishwashing areas.

18.K.12. Animals shall be excluded from the food preparation area at all times and the dining room during the preparation and service of food.

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#### 18.L. Cleaning, Sanitization and Storage of Equipment and Utensils

##### 18.L.1. Cleaning Frequency

- a. Kitchenware, tableware, utensils, and food-contact surfaces of equipment used in the storage, preparation, service, transportation or distribution of food shall be maintained in a clean and sanitary manner.
- b. Kitchenware, tableware, and utensils shall be allowed to drain and air-dry in racks or baskets on a nonabsorbent surface after being washed, rinsed and sanitized.
- c. The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other accumulated soil.
- d. Non-food-contact surfaces of all equipment shall be cleaned at such frequency as is necessary to be free of accumulations of dust, dirt, food particles and other debris.
- e. Cloths used for wiping food spills on kitchenware or food-contact surfaces of equipment shall be cleaned and rinsed frequently in a sanitizing solution.
- f. Ice scoops shall be kept in a firm container of stainless steel, impervious plastic or fiberglass. The container and ice scoop shall be washed and sanitized daily. The handles of ice scoops shall not come in contact with the ice.

##### 18.L.2. Manual Cleaning and Sanitizing

- a. Prior to washing, all equipment and utensils shall be preflushed, prescraped or presoaked to remove gross food particles and soil.

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b. Equipment and utensils shall be thoroughly washed in a detergent solution having a temperature of at least 110 degrees Fahrenheit, and then shall be rinsed free of such solution. All eating and drinking utensils and, where required, the food-contact surfaces of all other equipment and utensils shall then be sanitized by one of the following methods:

1. Immersion for at least one-half minute in clean hot water at a temperature of at least 170 degrees Fahrenheit.

2. Immersion for at least one minute in a clean solution containing at least fifty parts per million of available chlorine as a hypochlorite and at a temperature of at most 75 degrees Fahrenheit.

3. All chemicals used for sanitizing shall have complete instructions for use kept in the cleaning area.

c. When chemical sanitizing solutions are used for either manual or mechanical sanitization, procedures for testing shall be provided and used to measure the residual of the sanitizing chemical solution used at least daily.

#### 18.L.3. Mechanical Cleaning and Sanitizing

a. Warewashing machines and their auxiliary components shall be operated in accordance with manufacturers' instructions and procedures for testing shall be provided and used.

b. When chemicals are relied upon for sanitization, they shall be applied in such concentration and for such a period of time as to provide effective bactericidal treatment of the equipment and utensils:

1. The temperature of the wash water shall not be less than 120 degrees Fahrenheit.

2. Chemicals added for sanitization purposes shall be automatically dispensed.

3. The chemical sanitizing rinse water temperature shall be the temperature specified by the machine manufacturer.

c. Dishwashing racks, when not in use, shall be stored in a clean area off the floor.

#### 18.L.4. Equipment and Utensil Handling and Storage

a. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Tableware shall be handled without contact with inside surface or surfaces that contact the user's mouth.

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- b. Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in an enclosed, clean, dry location and protected from contamination by splash, dust, and other means. Equipment and utensils shall not be placed under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.
- c. Cleaned utensils shall be stored covered, inverted or appropriately stored on utensils racks.
- d. Facilities for the storage of knives, forks, and spoons shall be designed and used to present the handle to the employee, resident or user.
- e. All tableware, kitchenware, and utensils shall be in good repair and be free of stains, breaks, cracks, chipped places, corrosion and open seams.

#### 18.M. Garbage and Rubbish

##### 18.M.1. Containers

All waste not disposed of by mechanical means shall be kept in containers constructed of durable metal or other approved types of material which do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers. All containers shall be provided with tight-fitting lids or covers.

##### 18.M.2. Storage

- a. Garbage and rubbish containing food waste while in the kitchen shall be stored so as to be inaccessible to vermin.
- b. Storage rooms or enclosures shall be constructed of easily cleanable, washable materials and shall be vermin proofed.
- c. Garbage containers and returnable/recyclable materials shall be stored outside the facility, either on a sealed and easily cleanable concrete slab, dense sealed bituminous surface, or a rack which is at least six (6) inches above the ground.
- d. Storage areas shall be clean, and kept free of litter.
- e. All storage containers shall be insect-tight, easily cleanable and adequate for the proper storage of all garbage and rubbish.
- f. The premises of the facility shall be kept free of litter and dirt.
- g. Refuse storage bins shall be maintained in a safe and sanitary condition.

##### 18.M.3. Disposal

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- a. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or rubbish is prohibited.
- b. All garbage and rubbish shall be removed from the kitchen at least daily, and from the premises as frequently as necessary, but at least weekly. Where municipal or private disposal services are not available, the facility shall dispose of the refuse by transportation to a disposal site approved by the local community involved, or by the State.

#### 18.N. Dietary Areas

##### 18.N.1. Kitchen Area

###### a. Size and Segregation

Kitchens shall be segregated from other areas and large enough to allow for adequate equipment to prepare and care for food properly.

###### b. Floors

Floors shall be waterproof and smooth with easily cleanable surfaces.

###### c. Walls

All wall surfaces shall be smooth and non-porous

###### d. Ceilings

Ceilings shall be sound and heat insulated when located beneath a resident area.

###### e. Ventilation

Ventilation must be provided to maintain food integrity and reasonable comfort of the staff. All doors, windows and fans shall be placed so that air flow is not directed at food. Outside ventilation openings shall be screened.

###### f. Sewer Lines

Sewer lines in food storage, preparation and service areas must have anti-backflow devices and must be enclosed.

##### 18.N.2. Equipment

a. Dietary areas shall be appropriately and adequately equipped for food storage, preparation, service, transportation and distribution.

###### b. Installation

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All equipment and appliances shall be installed to permit thorough cleaning of the equipment, the floors and the walls around them.

#### c. Warewashing

A warewashing machine shall be required in each facility. All facilities or new dietary areas for which construction is started after the effective date of these regulations shall provide a dishwashing area separated from the food preparation and serving areas by at least a four (4) foot high partition. An easily readable thermometer shall be provided in each tank of the dishwashing machine which will indicate to an accuracy of +3 degrees Fahrenheit, the temperature of the water or solution therein.

#### d. Sinks

All new facilities or facilities proposing major renovations shall have a three compartment warewashing sink (at least 12 inches deep) and a separate handwashing sink conveniently available.

### 18.N.3.Storage

#### a. Dry Storage

Sufficient dry storage space that is ventilated and accessible to the kitchen shall be provided.

#### b. Kitchenware, Tableware, and Utensils

Space that is protected from potential contamination shall be provided for the storage of kitchenware, tableware and utensils.

#### c. Janitor's Closet

All facilities or new kitchen areas for which construction was started after July 1, 1994 shall have a separate janitor's closet for floor cleaning equipment to be used for the dietary service area. All facilities shall have designated floor cleaning equipment for the dietary service area.



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### RECORDS

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#### 19.A. Clinical Records

The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices.

19.A.1. All current clinical information pertaining to a resident's stay shall be available at the nurses station.

a. The resident's records must be kept in the facility at all times. The record may be in paper or electronic format.

b. All recording is done in the facility.

c. The records are immediately available to resident care personnel.

19.A.2. Pertinent, non-clinical information shall be kept current, including address and phone number of the resident's legal representative or interested family member.

#### 19.B. Retention of Records

##### 19.B.1. Active Clinical Records

The following current records shall be available and retained at the nurses station as indicated:

a. Identification sheet - retain permanently.

##### b. Physician Records

1. History and latest complete report of physical examination.

2. Progress notes - for at least past 12 months.

3. Order sheets - for at least past 12 months.

4. Consultations - for past 12 months.

##### c. Professional Services

1. All MDS forms for the past 15 months.

2. RAPS summary forms for the past 15 months.

3. Documentation of interventions, significant changes, observations, acute episodes, and progress notes for the past 12 months.

d. The Care Plan - for the past 12 months.

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- e. Results of any preadmission/annual screening - permanently.
- f. Assessments by any additional professional discipline not included in the comprehensive assessment by the multidisciplinary team - for the past 24 months.
- g. Medication and treatment sheets for past 6 months.
- h. Diagnostic reports, lab, x-ray and diabetic records for past 12 months, unless frequent lab work, then 6 months.
- i. Vital signs and weights for past six (6) months.
- j. Personal care records - for past three (3) months.
- k. List of valuables.
- l. Transfer information.

#### 19.B.2. Purging of the Active Clinical Record

Active clinical records may be purged after the period(s) of retention listed in 19.B.1. above. These purged records must be available at, or easily accessible to the nurses station.

#### 19.C. Miscellaneous Records

19.C.1. Miscellaneous records shall be maintained and retained as follows:

- a. Monthly activities schedule - retain for 12 months.
- b. Staffing schedule - retain for 5 years for auditing purposes.
- c. Menu plans - retain for 3 months.
- d. Food purchase orders - retain for 5 years for auditing purposes.
- e. Reports of fire drills - retain for 12 months.
- f. Incident reports - in a separate file. Current file should include 12 months - retain for 5 years.
- g. Quality Assurance Committee and utilization review reports - keep together for 12 months and retain for 5 years.
- h. Minutes of Committee meetings, inservice, etc. keep together for 12 months and retain for 5 years.
- i. Consultant reports - keep together for 12 months and retain for 5 years for auditing purposes.

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j. Reports of surveys, inspections, water tests, permits - keep together for 12 months and retain for 3 years.

#### 19.D. Inactive Clinical Records

19.D.1. Clinical records must be retained for:

a. The period of time required by State law or five years from the date of discharge, whichever is greater.

b. For a minor, three years after a resident reaches legal age under State law.

19.D.2. Before filing, each sheet should be checked to be sure that it is completed as appropriate.

19.D.3. Purged records shall be arranged in chronological order and filed in the inactive files.

19.D.4. For discharged/closed records, all material pertaining to the resident, including the clinical record, administrative record and care plan shall be filed together and according to accepted Medical Record standards.

#### 19.E. Readmissions

19.E.1. When a facility readmits a resident within one month, the resident's clinical record must contain the following documentation:

a. New physician orders;

b. Updated physical exam;

c. A comprehensive assessment; and

d. A current note by all appropriate professionals.

19.E.2. For readmission after more than one month of discharge, a new record must be completed.

#### 19.F. Transfers and Discharges

19.F.1. For transfers within a facility with distinct parts, the current record may be continued.

19.F.2. Before a facility transfers or discharges a resident from one facility to another facility, institution or agency, the facility must prepare a referral form. The referral form is forwarded at the time a resident is transferred. A copy is to be retained in the resident's record. To ensure the optimal continuity of care, the referral form shall contain an appropriate summary of information about the discharged resident.

#### 19.G. Incident and Accident Records

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19.G.1. A report on a separate form shall be made on any occurrence affecting the safety, health or well-being of a resident, staff or visitor which may result in an injury. Medication reactions and errors involving a resident shall also be recorded on the report.

19.G.2. Any resident who has sustained an injury or accident shall be examined by a physician, unless, after assessment by a Registered Professional Nurse, is determined not to require an examination by a physician. In either case, documentation of the incident or accident shall be recorded.

19.G.3. The extent of injury and treatment shall be recorded on the resident's record, with notification made by the facility and/or the physician, to the nearest relative, guardian or conservator of the resident.

19.G.4. The administrator or the director of nurses shall initial all incident and accident reports within twenty-four (24) hours of occurrence.

19.G.5. All incident and accident reports shall be kept on the premises of each facility and shall be reviewed at each meeting of the Quality Assurance Committee. The minutes of these meetings shall be available for review by Department personnel.

#### 19.H. Individual Administrative Records

Records must be kept in the facility, but not necessarily in the nurse's station. Each resident shall have a separate folder which may include:

19.H.1. Resident rights acknowledgment;

19.H.2. Contract with resident;

19.H.3. Statement of who is responsible for personal needs monies;

19.H.4. Records of personal needs monies, including receipts, bank books, or statements and any relevant documentation. These may be filed in inactive files after twelve (12) months;

#### 19.I. Confidentiality

The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

19.I.1. Transfer to another health care institution;

19.I.2. Law;

19.I.3. Third party payment contract;

19.I.4. The resident; or

19.I.5. The Department.

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#### 19.J. Access

The facility must:

19.J.1. Permit each resident and his/her authorized representative to inspect his or her records within twenty-four (24) hours of request. Such inspection shall occur at reasonable times and in the presence of a member of the facility's staff.

19.J.2. Provide copies of the records to each resident no later than two (2) business days after a written request from a resident, at a photocopying cost not to exceed the amount customarily charged in the community.

19.J.3. Records shall be made available for inspection and/or copying by representatives of the Department.

#### 19.K. Storage of Records

19.K.1. The facility must safeguard clinical record information against loss, destruction, or unauthorized use.

19.K.2. All records shall be completed prior to filing, and shall be filed in a manner to facilitate retrieval of the complete record when needed. Provision shall be made for adequate facilities and equipment, conveniently located, for the safe storage of all records and accessibility when needed.

19.K.3. In the event of change in ownership of any licensed facility, all resident records and registers shall remain the property of the facility.

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#### 20.A. Structure

##### 20.A.1. Requirements for Each Facility

The facility must provide a safe, functional, sanitary and comfortable environment for residents, staff and the public.

Each licensed facility shall:

- a. Be so located as to be free from undue noises, smoke and dust;
- b. Be served by a road which is kept passable at all times of the year;
- c. Be equipped with a central heating plant connected to a radiator, convector, or register in each room or area used by residents or staff. The heating system must be capable of maintaining a temperature of 75 degrees Fahrenheit throughout the residents' section of the building. Alternate heating systems may be approved by the Department if a uniform temperature of 75 degrees Fahrenheit can be safely maintained in the home;
- d. Be structurally sound, in good repair and attractive inside and out;
- e. Be equipped with sturdy handrails on each side of all inside and outside stairs that are accessible to residents, unless the Department has given prior written approval for any exceptions. All stairways shall be provided with non-skid treads;
- f. Be served by reliable electrical service;
- g. Maintain an effective pest control program so that the facility is free of pests and rodents;
- h. Have adequate outside ventilation by means of windows or mechanical ventilation or a combination of the two. All windows must be functional and adequately protected by screening;
- i. Have smooth floors that can be easily cleaned and are free from hazards. Floors in hallways that are a traffic way for residents and nursing staff, bathrooms, resident bedrooms, kitchens, utility rooms and similar areas shall be covered wall-to-wall with inlaid linoleum, asphalt tile, rubber tile, vinyl tile, carpets or similar materials approved by the Department, unless the existing floors and finish are in satisfactory condition for proper sanitation;
- j. Have all walls and ceilings in good repair, free from cracks and holes and of a type of finish that can be satisfactorily cleaned;
- k. Have handrails along both sides of corridors;
- l. Provide safety devices across windows lower than two (2) feet from the floor, and open porches, at changes in floor level and at any other danger areas inside or outside the building, as recommended by the Department;

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- m. Have no other business conducted in the building, unless approved by the Department;
- n. Have no rented apartments, rooms, or living space in the licensed building for other persons, except when such areas are used by the licensee, immediate family members or employees;
- o. Have a telephone in the building and additional telephones or extensions as required by the Department to summon help promptly in case of fire or other emergencies. Pay stations or locked telephones do not meet this requirement;
- p. Have a telephone accessible to, and useable by, every resident. The resident shall be afforded privacy to use the phone;
- q. Have only ambulatory residents in bedrooms on any floor that is served by a corridor that is less than four (4) feet wide, or by any inside exit stairway which is less than three (3) feet wide, measured between walls or banister, or on floors to which residents cannot be carried on an inside stairway without removal from a litter;
- r. With non-ambulatory residents, have an exterior ramp installed from the first floor to the grade to serve all portions of the building where wheelchairs are or may be placed. The maximum slope shall be 1" 3/16 in 12". All ramps shall be provided with handrails. The width of all ramps shall be not less than four (4) feet, clear of all obstructions. Surfaces of ramps shall be of non-skid material;
- s. Have all open porches and verandas protected by sturdy rails of a height not less than forty (40) inches.
- t. Have no blind or non-ambulatory resident or residents who would be unable to evacuate the premises in an emergency without physical assistance from others housed above the first floor in any facility, unless the building is of one (1) hour protected non-combustible construction; fully sprinklered one (1) hour protected ordinary construction; or fully sprinklered one (1) hour protected wood frame construction;
- u. Be accessible to and functional for residents, personnel and the public. All facilities shall comply with all Federal and State regulations regarding access and usability by the physically handicapped. At the discretion of the Department, time-limited waivers for existing facilities may be requested.
- v. Safety alert systems, approved by the Department, shall be provided at all exit doors that are in areas routinely used by residents.

#### 20.A.2.Elevators and Dumbwaiters

Each facility shall:

- a. Have an elevator if beds are located on floors above street level;

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b. Have the installation and maintenance of elevators, chair glides, and dumbwaiters comply with all applicable codes;

c. Assure that elevators are of sufficient size to accommodate a wheeled stretcher.

At the discretion of the Department, time-limited waivers for existing facilities may be requested.

#### 20.B. Utilities

##### 20.B.1. Water Supply

a. Every licensed facility shall use an approved public or municipal water supply, whenever available.

b. In areas where an approved public or municipal water supply is not available, a private water supply, under pressure, shall be provided for each licensed facility and it shall meet the standards approved by the Division of Health Engineering in the Department. If water is used from private supply, water samples shall be submitted to the Division of Health Engineering at least once every three (3) months.

c. There shall be sufficient water pressure to meet the sanitary needs of each licensed facility at all times.

d. There shall be an adequate supply of hot water for residents' use available at all times.

e. All plumbing shall comply with the standards set by the State of Maine Plumbing Code, including any amendments thereof or additions thereto, or any higher standards set by local ordinances.

##### 20.B.2. Sewage Disposal

a. Each licensed facility shall dispose of all sewage and liquid wastes into a public sewerage system, if available.

b. If a public sewerage system is not available, sewage and liquid wastes shall be collected and disposed of in private disposal facilities, the construction, maintenance, and operation of which must be approved by the Division of Health Engineering of the Department.

c. Plans for any proposed disposal system and/or additions thereto must be reviewed and approved by the Division of Health Engineering of the Department before construction is started.

##### 20.B.3. Lighting

a. Each licensed facility shall provide all entrances, hallways, stairways, ramps, cellars, attics, storerooms, kitchens, laundries and service units with sufficient natural or artificial lighting.

b. Natural or artificial lighting shall be provided for various areas as follows:



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	Minimum Foot Candles
Entrances, Exits, Hallways, Stairways, Ramps .....	20
Storerooms .....	20
Bedrooms - General .....	20
Reading or Sewing .....	30
.. Bathrooms, Lavatories .....	20
Dining room .....	30
..... Living room - General .....	20
Reading or Sewing .....	30
. Kitchen, Laundry, Office, Utility Room .....	30
Nurses Station - General .....	20
Desks and Charts .....	30
.... Medication Cabinet .....	30

c. The use of candles, courtesy oil lanterns and other open-flame methods of illumination is prohibited.

20.B.4. Electrical Power

New Construction, Change of Ownership or Renovations

All new facilities, facilities changing ownership, or facilities proposing major renovations which require a Certificate of Need shall require the installation of an emergency generator.

20.B.5. Standards for All Facilities in the Case of Electrical Power Outage

a. All licensed facilities shall provide continuing sources of emergency power (electrical or otherwise) needed to maintain the following essential services:

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1. The fire detection and alarm systems;
2. The telephone system;
3. Boiler room burners, fans, or pumps;
4. Exit and corridor lights;
5. Call systems;
6. Lights at the nurses station;
7. Food preparation;
8. Adequate heat for specified areas of the building for resident comfort, if electrical heat is provided;
9. Pumps for water supply; and
10. Pumps for private septic system.

b. When life support equipment or life support systems are used, the facility must provide sufficient emergency electrical power to ensure the safe and uninterrupted operation of the life support equipment or system with an emergency generator that is located on the premises.

#### 20.C. Maintenance

##### 20.C.1. Written Policies

- a. Maintenance services shall be described in the written policy material for each facility with delineation of staff and the time allocations.
- b. There shall be a preventive maintenance plan and schedule.

##### 20.C.2. Maintenance Plan

Every licensed facility shall:

- a. Keep the building in good repair and free of hazards such as cracks in floors; walls or ceilings; warped or loose boards; warped, broken, loose or cracked floor covering, such as tile or linoleum; loose handrails or railings; loose or broken windowpanes and any similar hazard;
- b. Keep all electrical mechanical and fire protection systems in a safe and functioning condition. All appliances shall be maintained in a safe condition. Frayed wires, cracked or damaged switches, plugs and electric fixtures shall be repaired or replaced. Extension cords shall not be used;

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- c. Keep all plumbing fixtures in good repair, properly functioning and satisfactorily provided with protection to prevent contamination from entering the water supply piping;
- d. Inspect the heating system regularly and make all necessary repairs to maintain it in a safe and functioning condition;
- e. Paint the interior and exterior of the building as needed to keep it attractive. Loose, cracked or peeling wall paper or paint shall be promptly replaced or repaired to provide a satisfactory finish;
- f. Keep all furniture and furnishings functional and in good repair;
- g. Keep the grounds and other buildings on the grounds in a safe, sanitary and presentable condition. Grounds shall be kept free from refuse, litter and insect and rodent breeding areas;
- h. Maintain driveways, parking areas and exterior walkways, fire lanes, ramps, stairs and means of egress free of ice, snow, debris and other hazards.

#### 20.D. Fire Safety

##### 20.D.1. Certification

Each facility shall be certified by the Department of Public Safety of the State of Maine as having complied with the fire protection and prevention requirements.

##### 20.D.2. Disaster and Emergency Preparedness Plan

- a. All facilities shall develop a written disaster plan and procedures to meet the needs of the facility. The disaster plan shall be written to identify emergencies and disasters most likely to occur.
  - 1. plan for a disaster within the facility which could encompass moving residents from one area of the facility to another area of the facility or to another building within the community, (i.e., fire, loss of heat, power, or water, structural damage, etc.) The plan must specify the source of emergency power and the methods that will be used to meet the requirements contained in Chapter 20.B.5.
  - 2. second plan for a disaster outside the facility (in the community) which would not necessarily mean moving residents, but which provides a means for heat, lights and food if the existing facility does not have an emergency generator.
  - 3. third plan shall address other potential emergencies, (i.e., severe weather, missing residents, etc.)
- b. copy of the disaster plan shall be provided to the Department. Revisions shall be submitted when they occur.
- c. employee Instruction

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Employees shall be trained when they begin to work in the facility in the use of fire fighting equipment, and in the evacuation of residents from the scene of the fire and other emergencies. Orientation to the Disaster and Emergency Preparedness Plan shall be provided upon employment, with annual training provided thereafter.

#### d. Posting of Fire Regulations and Evacuation Plan

Fire regulations and evacuation plans shall be posted in a conspicuous place on each floor of each section of the facility, setting forth the emergency steps to be taken on discovery of a fire.

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#### e. Drills

Drills, constituting rehearsal of the disaster plan, shall be conducted at irregular intervals twelve (12) times a year. There shall be at least three (3) drills a year for each shift. A record shall be kept of each drill, showing date and time, staff performance, results of each drill, and corrective measures being taken as directed thereby.

#### 20.D.3. Reporting of Fire Incidents

A verbal, followed by a written, report shall be made immediately to the Department and to the State Fire Marshal's Office, Department of Public Safety, of any smoke or any fire incident involving the facility or any resident, including the date, time and place of the incident, description of what occurred and the action taken.

#### 20.D.4. Testing of Equipment

##### a. Manual Fire Alarm Systems

The manual fire alarm system shall be tested minimally on a monthly basis.

##### b. Emergency Lights

The emergency lights shall be checked at least monthly.

##### c. Sprinkler System

The sprinkler system shall be checked by a qualified sprinkler serviceman at least annually.

##### d. Fire Extinguishers

Fire extinguishers shall be checked and tagged at least annually, or more often as indicated.

##### e. Emergency Generator

The emergency generator shall be made operational for a period of at least half an hour each month.

f. A record book shall be maintained showing the date each of the above tests or checks was performed, by whom and the results.

g. Any equipment found defective shall be repaired as soon as possible.

#### 20.E. Residents' Bedrooms

##### 20.E.1. Provision for Residents' Bedrooms

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- a. Each bedroom for the accommodation of residents shall be given a separate, permanent number or name and this identification shall not be changed without notification to the Department. Such number or name shall be stated on all plans, with the maximum number of occupants.
- b. Single bedrooms for the accommodation of residents shall allow a minimum of one hundred (100) square feet of usable floor space.
- c. Multiple bedrooms shall provide a minimum of eighty (80) square feet of usable floor space per bed.
- d. Newly constructed facilities or additions that include bedrooms or renovations to existing bedrooms in existing facilities approved after the adoption of these regulations shall provide one hundred (100) square feet of usable floor space per bed. Usable floor space shall be calculated only for that floor space having a ceiling height of seven (7) feet. Usable floor space shall exclude door-swing area, passageways, closets and vestibules.
- e. No room shall have more than four (4) beds. In new facilities planned after July 1, 1994, no room shall have more than two (2) beds.
- f. Each resident's bedroom windows shall be grade level on a vertical plane, located on an exterior wall and shall have an unobstructed view when the situation is under control of the facility.
- g. Each resident's bedroom shall be an outside room, with a minimum window glass area equal to 1/10 of the available floor space and no more than three (3) feet high from the floor. The windows shall be openable and equipped with window shades or equivalent in good repair. In air conditioned buildings, only one (1) window in each room must be openable.
- h. Each resident's bedroom shall have direct access to a corridor without passing through the kitchen, bathroom, or another resident's room.
- i. Each resident's room must be equipped with, or located near; toilet and bathing facilities.
- j. For newly constructed or renovation of facilities planned after July 1, 1994, each resident shall be provided with a separate and individual closet in the bedroom, with clothes racks and shelves accessible to the resident. The closet pole shall be no more than sixty (60) inches from the floor and the door shall have a twenty (20) inch minimum width. Shelves shall be at least twenty-two (22) inches long by twenty (20) inches wide for each bed.
- k. Each resident's bedroom shall be provided with a mirror.
- l. For newly constructed or renovations of facilities planned July 1, 1994, each bed shall have ceiling suspended curtains which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtains.
- m. Handwashing sinks located in the bedroom shall be provided with total visual privacy, if used by residents for personal care.

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#### 20.F.1. Beds

- a. Each resident shall be provided an adjustable hospital-type single or twin bed, at least thirty-six (36) inches wide and of proper size and height for the convenience and needs of the resident. Beds must be of substantial construction and in good repair.
- b. For new construction and/or replacement, the beds shall be adjustable as to height and positioning of the head and lower sections of the bed.
- c. Each bed shall have a label identifying the resident.
- d. Each bed shall be provided with satisfactory type springs in good repair and a clean, comfortable mattress at least five (5) inches thick, four (4) inches if of foam rubber construction, and four and one-half (4 1/2) inches thick, if of inner spring type and standard in size. Each bed shall be provided with two (2) clean, comfortable pillows of average bed size and moisture-proof covers and sheets, as necessary, to keep the mattress and pillows dry and clean.
- e. Beds shall be so placed in each room so as to be easily serviceable and not subjected to extremes of heat or cold. Beds shall not be placed closer than three (3) feet from other beds and walls; for new construction, four (4) feet shall be the distance. The head of a bed may be placed against a properly insulated exterior wall. No bed shall be placed within three (3) feet of a heating unit.

#### 20.F.2. Additional Equipment

- a. For each resident's bed, there shall be:
  1. A bedside cabinet with a drawer and washable top;
  2. A minimum of two (2) dresser drawers and a minimum of four (4) dresser drawers in newly constructed or renovated facilities;
  3. An individual towel rack;
  4. A comfortable non-folding chair, or a chair designed specifically for geriatric use; and
  5. A reading lamp.
- b. Individual bedpan, urinal, and washbasins used by the resident shall be stored in the resident's room within an enclosed bedside table or in a separate cabinet or in some other conveniently accessible space with resident identification for individualized use.
- c. Each facility shall have appropriate functional furniture, including over-bed or chair-side tables to meet the needs of the residents.

#### 20.F.3. Call System

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- a. There shall be an automatic call system provided at each bed, as well as in each resident toilet room, bathing room, shower room, beauty parlor and common resident areas.
- b. On any floor without staff on duty at all times, the call system from each bed, resident toilet room and bathing room shall be connected to the nearest nurses station, identifying the location of the call.
- c. New facilities planned after July 1, 1994, shall have intercom systems connecting resident areas with the nurses station.

#### 20.G. Provision for Isolation

Provision shall be made for isolating infectious residents in well-ventilated bedrooms having separate toilet and bathing fixtures.

#### 20.H. Bathing, Lavatory and Toilet Fixtures

##### 20.H.1. Requirements

- a. Provide a minimum of one (1) bathtub or shower for each fifteen (15) residents, with a bathing facility on each resident floor. At least one (1) bathtub per floor must be provided, and in all facilities of more than fifteen (15) beds, at least one (1) shower adapted for use of wheel-in shower chairs must be provided. Requests for exceptions to these requirements may be made in writing when there is a bathing facility designed and equipped to bathe handicapped individuals and justification for the exception is documented. The Department shall indicate in writing whether or not the request for exception is granted.
- b. All new facilities or additions of more than four (4) beds to existing facilities, for which construction is started after July 1, 1994, shall provide a minimum of one (1) lavatory and one (1) toilet for each four (4) residents on each floor, directly accessible from bedrooms without entering the general corridor and separate from bathing fixtures.
- c. At least one (1) toilet room accessible from the corridor shall be provided for toilet training of wheelchair residents, providing at least three (3) feet of clearance on both sides and in front of the water closet. A minimum door width of two (2) feet, eight (8) inches shall be provided to all resident toilet areas.
- d. The number of licensed beds shall be used in determining the number of toileting, bathing and lavatory fixtures required.
- e. In newly constructed or renovated facilities after July 1, 1994, there shall be separate bathrooms provided for staff and visitors.

##### 20.H.2. Location

- a. All bath and toilet rooms shall be easily accessible and conveniently located.



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b. No bath or toilet room shall be so located that a resident must pass through another resident's room to enter it.

c. No toilet room shall open directly into a kitchen, pantry or food preparation or storage room, or be so located that anyone carrying bedpans or urinals must pass through any of the above areas to enter it.

#### 20.H.3.Ventilation

All bath and toilet rooms shall be ventilated to the outside either by means of a window that can be opened or by an exhaust fan.

#### 20.H.4.Fixtures

a. All bathrooms and bathroom fixtures shall be of sound construction, in good repair and designed so that they may be maintained in a clean and sanitary condition.

b. All toilets, showers and bathtubs shall be provided with handgrips to assist residents.

#### 20.H.5.Lighting and Locks

a. Each toilet room and bathing room shall be adequately lighted and have a light switch just inside or outside the door, and shall have a well-lighted mirror for each lavatory.

b. Locks on the rooms shall be readily openable from the outside under all circumstances.

#### 20.H.6.Call Bells and Door Alarms

a. Automatic call bells shall be provided for each toilet and bathing room for resident use.

b. Safety alert systems, approved by the Department, shall be provided at all exit doors that are in areas routinely used by residents.

#### 20.H.7.Partitions

Partitions shall be installed to provide privacy for each toilet and bath fixture when there is more than one (1) such fixture in a room.

#### 20.H.8.Equipment for Toilet Training

a. One (1) toilet enclosure that is accessible and large enough to permit toilet training of wheelchair residents shall be provided on each floor having wheelchair residents.

b. A lavatory and a mirror so located and hung that they can be used by wheelchair residents shall be provided for each of these toilets.

#### 20.H.9.Hot Water Temperature

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Plumbing fixtures which require hot water and which are accessible to residents shall be supplied with water which is thermostatically controlled to provide a water temperature of no higher than 120 degrees Fahrenheit at the fixture.

#### 20.H.10. Restricted Use

Residents' bathing, lavatory and toilet rooms shall not be used as utility areas, linen storage or medication areas.

#### 20.I. Nurses Station

20.I.1. A nurses station, no more than one hundred twenty (120) feet from the farthest resident room, shall be provided on each floor of any multi-story building.

20.I.2. The nurses station shall provide adequate space for maintaining residents' records and to accommodate related staff activities.

20.I.3. All facilities shall have a well-lighted medication area containing a locked medicine cabinet or cart with one (1) or more locked sections for controlled substances and poisons, cabinet space, work space for preparation of medicines and a hand-washing sink with hot and cold running water. Any refrigerator for storing items other than food shall be in a secured (locked) area or have a compartment which may be locked.

20.I.4. The number of nurses stations and medication areas will be on the basis of facility size, physical plant layout and type of care provided, subject to Department approval.

#### 20.J. Utility Area

##### 20.J.1. Clean Utility Room

A room with a handwashing sink shall be provided for storage of nursing supplies and equipment. The medication room may also serve as the clean utility room, if sufficient space is available.

##### 20.J.2. Soiled Utility Room

A closet or other room shall be provided in each resident service area, separate from bathrooms or kitchen, and equipped with counter space, handwashing sink and an appropriate utility hopper to facilitate cleaning of nursing care equipment. The hopper shall have a bedpan flushing attachment.

##### 20.J.3. Storage

- a. A closet or other enclosed storage space shall be provided for storage of necessary nursing equipment.
- b. A closet or other suitable space shall be provided for such equipment as wheelchairs, walkers, lifts, etc.

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#### 20.J.4. Housekeeping Utility Room

Each facility shall have a closet or other enclosed space for mops, brooms, scrub pails, and other utensils used for cleaning purposes. Every facility shall have a service sink large enough to handle janitorial equipment, with hot and cold running water. This room shall be secured to prevent resident access.

#### 20.J.5. General Storage Areas

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#### a. Residents' Storage Areas

Each facility shall have sufficient appropriate and secure areas provided for the storage of residents' possessions and out-of-season clothing.

#### b. Facility's Storage Areas

A separate storage area of sufficient size shall be provided to accommodate seasonal outdoor furniture and maintenance equipment.

#### 20.J.6. Department Approval

The number and location of utility and storage areas will depend upon the size of the facility, its physical layout and type of residents receiving care, subject to Department approval.

#### 20.K. Living Room and Dining Area

##### 20.K.1. Requirements

a. Each licensed facility shall provide a living or recreation room and a dining room for the use of the residents. Corridor area shall not be acceptable as a living room, recreation room, or dining room.

b. No room shall be used as a multi-purpose room for dining, living room and recreation room without prior approval of the Department. There shall be sufficient space to accommodate all activities and prevent their interference with each other.

##### 20.K.2. Size

All newly constructed facilities or additions of four (4) or more beds to existing facilities, for which construction is started after July 1, 1994, shall provide living room and dining room areas to the extent of forty (40) square feet per bed. Window area shall be provided equal to 1/10 of the available floor space.

##### 20.K.3. Location and Size

Living room and dining areas shall be accessible to all residents. The size and location of living room and dining area will be dependent upon the type of care being offered, the number of floors in the facility and the total number of licensed beds.

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#### 20.K.4.Furnishings

- a. All rooms used for dining or recreation shall be provided with an adequate number of reading lamps capable of producing thirty (30) foot candles of light at reading level.
- b. All resident dining or activity rooms shall be furnished with attractive, durable and functional furniture and equipment in good repair and appropriate to the residents' needs.

#### 20.L. Therapy Areas

Existing facilities shall provide areas for therapy services of sufficient size to accommodate the necessary equipment to meet residents' needs. All newly constructed facilities or additions of four (4) or more beds to existing facilities for which construction is started after July 1, 1994, shall provide areas for therapy services of sufficient size and appropriate design to accommodate the necessary equipment to meet residents' needs.

#### 20.M. Smoking

Smoking shall be permitted only in those rooms which are ventilated to the outside and which are designated specifically for that purpose.

#### 20.N. Laundry

##### 20.N.1.Laundry Room

###### a. Equipment

Every licensed facility shall provide a laundry room equipped with a handwashing sink and washing, drying, and ironing equipment. New construction after July 1, 1994 shall provide a hopper-type sink with spray on the soiled side of the laundry room.

The equipment must be sufficient in number and adequate to accommodate the needs of the facility and to assure that all laundry is done in a sanitary manner and that sufficient supplies are maintained.

###### b. Location

The laundry room, equipped as above, shall be located in a room used for that purpose only.

###### c. Lighting and Ventilation

1. Lighting shall be non-glare and adequate for employees to perform their tasks.
2. The laundry room shall be ventilated and adequate in size for the needs of the home and shall be maintained in a sanitary manner and kept in good repair.

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3. Ventilation to the outside shall be provided and be adequate to remove excessive heat and moisture generated by the laundry process.
4. The ventilation system shall assure that air flow is directed away from the clean area.
  - d. The size of the laundry room shall be adequate in size for all laundry procedures so that laundry can be processed in a sanitary manner. All new facilities shall provide separate entrances and exits for soiled and clean laundry.

#### 20.N.2. Personal Laundry

- a. All personal clothing of residents shall be properly marked and identified with the resident's name.
- b. The facility shall provide for the laundering of personal clothing when requested.
- c. Personal clothing that is washable shall be washed according to directions, mended and ironed as is necessary and returned to the resident promptly.

#### 20.N.3. Procedures

##### a. Soiled Linen and Personal Clothing

Personnel must handle, store, process and transport linens and personal clothing so as to prevent the spread of infection.

1. Personal laundry shall not be washed with other laundry.
2. All soiled linen and personal clothing shall be placed in a bag or laundry cart, covered and stored in a manner to prevent contamination and odors.
3. All soiled linen and personal laundry shall be collected and transported to the laundry in the washable containers in which it was collected.
4. All laundry personnel shall wear a protective apron and gloves and shall wash their hands thoroughly after handling soiled linen and personal clothing.
5. Soiled linen and personal clothing shall be handled and stored in such a manner as to prevent contamination of clean linen and personal clothing.
6. Facilities used to collect, transport, and store soiled linen and personal clothing shall not be used for the handling of clean linen and personal clothing.

##### b. Clean Linen and Personal Clothing

1. Clean linen and personal clothing shall be sorted, dried, ironed and folded in a sanitary manner in a specified area.

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2. Clean linen and personal clothing shall be transported, stored and distributed in a sanitary manner.

20.N.4.Policies

Laundry services shall be described in written policies that shall include procedures for the sanitary handling of soiled and clean linens and personal clothing, staff orientation and the delineation of staff duties and schedules.

20.N.5.Linen Storage Area

Adequate and convenient closed storage space for extra linens, including towels, wash cloths, pillows and bedding, shall be provided. The number and location of such shall depend on the size of the facility, its physical layout and the type of residents receiving care.

20.N.6.Linen Supply

a. Requirements

In each facility there shall be an adequate supply of linen. For each licensed bed there shall be a minimum of:

3 sets of sheets	3 pillow cases
3 large bath towels	2 pillows
3 hand towels	1 bath blanket
3 wash cloths	2 blankets
2 bedspreads	

b. Reserve Supply for Incontinent Residents

There shall be an adequate reserve supply of clean linen and other incontinent supplies available at all times so that incontinent residents can be kept clean and comfortable.

c. Quality of Linens

All linens shall be in good condition and free of rips, holes and stains.

20.O. Housekeeping

20.O.1.Each facility shall have the necessary staff to maintain the facility in a clean, attractive and orderly fashion.

20.O.2.The facility shall have policies and procedures to assure the following:

a. Services shall be described, with delineation of staff and time allocations;

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- b. Floors are non-slip and free from hazards;
- c. Equipment and supplies are properly stored;
- d. Bathtubs, shower stalls and lavatories are not used for other purposes;
- e. Storage areas are maintained in a safe and neat condition;
- f. Attics, basements, and similar areas are free of accumulations of refuse and discarded equipment.

#### 20.O.3. Infection Control

The facility shall provide a hygienic environment for residents and staff by having procedures for:

- a. Orientation of all staff
- b. The use, cleaning and care of equipment;
- c. The maintenance of cleaning schedules;
- d. On-going evaluation of cleaning effectiveness;
- e. Maintaining liaison with the Quality Assurance Committee as necessary;
- f. Education and training.

#### 20.P. Control of Odors

20.P.1. The control of odors shall be within the housekeeping staff's area of responsibility, using techniques of cleaning and proper ventilation.

20.P.2. Deodorizers shall not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.

#### 20.Q. Use of Nursing Personnel

Nursing personnel shall not be used for housekeeping or laundry services except under extraordinary circumstances.



## CHAPTER 21

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### INFECTION CONTROL AND BIOMEDICAL WASTE

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#### 21.A. Infection Control

The facility must establish an active program for the prevention, control, and investigation of infection according to current standards and Center for Disease Control (CDC) guidelines, which includes:

21.A.1. A protocol for early identification, reporting, and monitoring of infections (nosocomial and those present on admission) that will:

- a. Identify residents at risk;
- b. Maintain a separate record on infections that identifies the resident's name, date of infection, causative agent, origin or site of infection, and cautionary measures taken;
- c. Prevent infections common to nursing facility residents (e.g., vaccination for influenza and pneumococcal pneumonia as appropriate);
- d. Analyze the clusters and/or significant increases in the rate of infection;
- e. Report to appropriate agencies those infections for which reporting is mandated.

21.A.2. A protocol for prevention of the spread of infection:

- a. The facility must isolate the resident when the infection control program determines that a resident needs isolation to prevent the spread of infection.
- b. The facility must monitor staff infections and prohibit employees with a communicable disease or infected skin lesions from direct contact with residents food.
- c. The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice (per CDC guidelines).

21.A.3. An active training program that provides staff and residents, as appropriate, adequate information to prevent the spread of infection.

21.A.4. Routine monitoring of staff infection control practices.

21.A.5. Surveillance routinely reviewed and recommendations made by the Quality Assurance Committee.

#### 21.B. Biomedical Waste Management

21.B.1. Each facility shall have policies and procedures for containment and disposal of biomedical waste.

##### a. Identification of Biomedical Waste

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1. "Biomedical Waste" means a waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible host could result in disease.

2. "Body Fluids", as defined by the CDC, means waste which, at the time of generation, is soaked or dripping with human blood, blood products or body fluids.

3. "Sharps" means items which may cause puncture wounds or cuts including, but not limited to, hypodermic needles, syringes, scalpel blades, capillary tubes and lancets, disposable razors, Pasteur pipettes, broken glassware, I.V. tubing with needles attached and dialysis bags with needles attached.

#### b. Disposal

1. Biomedical waste shall be incinerated (or interred) per contract with a licensed biomedical waste contractor.

2. Biomedical waste (other than Sharps) shall be packaged in bags which are impervious to moisture and of sufficient strength to resist tearing or bursting.

a. All bags containing biomedical waste shall be red in color and be labeled with the symbol for biomedical waste.

b. Bags shall be sealed by forming a secure closure which results in a leak resistant seal.

c. Red bags may not be enclosed in a bag of another color.

3. Discarded sharps shall be placed directly into leak resistant, rigid, puncture resistant containers, without clipping or breaking.

a. Containers shall be taped closed or tightly lidded to preclude loss or leakage of contents.

## CHAPTER 22

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### ENFORCEMENT

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#### 22.A. Definitions

For the purposes of this Chapter, the following words have the following meanings:

22.A.1. "Deficiency" means a failure to comply with State licensing regulations.

22.A.2. "Directed Plan of Correction" means a plan of correction issued by the Department which directs a nursing facility how and when to correct any deficiency or deficiencies.

22.A.3. "Division" means the Division of Licensing and Certification.

22.A.4.A "failure to correct any deficiency" occurs when a nursing facility does not remedy a deficiency within the time established in a plan of correction or directed plan of correction or if an extension has been granted by the Division, within the period of that extension.

22.A.5. "False information" means written or verbal statements or representations of fact that are not true and that were made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not they were true.

22.A.6. "Impede or interfere with the enforcement of laws or regulations" means either a failure to provide to Division representatives information that is necessary to determine compliance with licensure laws or regulations, failure to allow Division representatives access to a nursing facility or any part of a nursing facility, failure to preserve evidence related to a particular violation, or retaliation against residents/employees for lodging of complaints with the Department of Human Services.

22.A.7. "Person" means any natural person, partnership, association or corporation or other entity, including any county, local or governmental unit.

22.A.8. "Plan of Correction" means a document executed by a nursing facility in response to a statement of deficiencies issued by the Division.

22.A.9. "Resident's rights" means those rights enumerated in either the Resident's Rights Act, 22 M.R.S.A. Section 7921 et seq., Chapter 10 of these regulations or 42 United States Code Section 1396 r (c).

22.A.10. "A repeated deficiency" occurs whenever a nursing facility fails to comply with the same State licensing regulation or fails to comply with the same requirement of 42 United States Code Section 1396 r (b), (c) or (d) on more than one occasion within a two year period.

22.A.11. "State licensing regulations" refers to the Division's regulations governing the licensing and functioning of nursing facilities.

22.A.12. "Statement of Deficiencies" means a document issued by the Division which describes a nursing facility's deficiencies in complying with State licensing regulations.

22.A.13. "Substantial probability" refers to something that is more likely to occur than not.

22.A.14. "Substantial Risk", with respect to a particular condition or event, refers to a danger that would be considered unacceptable to a reasonable person who is aware of the consequences of that condition or event.

22.A.15. "Submit" means to deposit in the U.S. Mail or to hand-deliver to the Division of Licensing and Certification.

22.A.16. "Timely corrective action" refers to the date stated in a plan of correction by which a specific deficiency will be corrected, or the date by which that specific deficiency must be corrected pursuant to a directed plan of correction, whichever is earliest.

22.A.17. "Working days" means weekdays excluding any weekday that a Statement of Deficiencies is received and excluding legal holidays.

## 22.B. General Procedures for Enforcement

### 22.B.1. Licensing Inspections

Each nursing facility will be inspected prior to being issued its initial license and annually thereafter prior to renewal of a license. The Division may also inspect at any other time to determine compliance with State licensing regulations. For nursing facilities providing both nursing home and assisted living services, the Division will ensure that a single coordinated licensing and life safety code inspection is performed.

### 22.B.2. Statement of Deficiencies

After any inspection, a Statement of Deficiencies will be sent to the facility if the inspection discloses any failure to comply with State licensing regulations. A Statement of Deficiencies will be accompanied by either a Plan of Correction form or a Directed Plan of Correction.

### 22.B.3. Plans of Correction

If mailed a Plan of Correction form, the provider must complete it by indicating how and when any deficiency will be or has been corrected, and submit it to the Division within ten working days of receipt of any Statement of Deficiencies. The Division will have ten (10) days after receipt to determine whether it accepts the Plan of Correction.

### 22.B.4. Failure to Correct Deficiencies

The failure to correct any deficiency or deficiencies or to file a Plan of Correction with the Division may lead to the imposition of sanctions or penalties as described in this Chapter.

### 22.C. Intermediate Sanctions

The Division is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 22.D., below, are present and the Division determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations or to protect the residents of a nursing facility or the general public.

22.C.1. The Division may direct a nursing facility to stop all new admissions regardless of payment source or to admit only those residents the Division approves, until such time as it determines that corrective action has been taken.

22.C.2. The Division may issue a Directed Plan of Correction.

22.C.3. The Division may impose a financial penalty upon a nursing facility.

### 22.D. Grounds for Intermediate Sanctions

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

22.D.1. Operation of a nursing facility without a license.

22.D.2. Impeding or interfering with the enforcement of laws or regulations governing the licensing of nursing facilities, or giving false information in connection with the enforcement of such laws and regulations.

22.D.3. Failure to submit a Plan of Correction within ten (10) working days after receipt of a Statement of Deficiencies.

22.D.4. Failure to take timely corrective action in accordance with a Plan of Correction or a Directed Plan of Correction.

22.D.5. Failure to comply with State licensing laws or regulations when this failure poses an immediate threat of death or substantial probability of serious mental or physical harm to a resident or residents.

22.D.6. The occurrence of a repeated deficiency that poses a substantial risk to any resident's health or safety or infringes upon any resident's rights.

22.D.7. Failure to comply with 42 United States Code, Title 42, Section 1396 r (b) Requirements Relating to Provision of Services; (c) Requirements Relating to Residents' Rights; and (d) Requirements Relating to Administration and Other Matters.

#### 22.E. Procedure for Imposing Financial Penalties on Nursing Facilities

##### 22.E.1. Assessment of Financial Penalties

Upon review or inspection of a nursing facility, the Division of Licensing and Certification will compile a list of deficiencies found (if any) and send out a Statement of Deficiencies. The Division will also review the deficiencies to ascertain whether there are any grounds for assessment of financial penalties in accordance with Sections 22.C., 22.D., and 22.F. of this Chapter. If the Division determines it is appropriate to assess financial penalties against a nursing facility, based on a Statement of Deficiencies, the Division shall issue to that facility an Assessment of Financial Penalties. That Assessment shall describe the grounds for the imposition of the penalty, the regulation or law that has been violated, and the scheduled amount of the fine corresponding to that violation.

Penalties shall accrue with interest for each day that grounds for imposition of the penalty exist, after the date upon which an Assessment of Financial Penalties is issued. The burden of demonstrating correction of the grounds that support any penalty rests with the facility.

In any instance where the Division imposes a penalty or penalties for conduct described in Section 22.D.7., penalties will not be imposed pursuant to Sections 22.D.5. or 22.D.6. for that same conduct.

##### 22.E.2. Payment of Penalty

If the nursing facility does not contest the imposition or amount of a penalty assessed by the Division, the facility must pay the Department the amount of that penalty within thirty (30) days of receipt of the Assessment of Penalties. The Department may offset against any reimbursement due the facility the amount of any penalties that are outstanding after this time period.

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22.E.3. Informal Conference

If a nursing facility disagrees with the imposition or amount of any penalty assessed by the Division, the facility must notify the Division in writing, stating the nature of the disagreement, within ten (10) working days of a receipt of an Assessment of Penalties. Upon receipt of this request, the Director of the Division of Licensing and Certification or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Division Director or his/her designee shall inform the facility of the result of the informal conference in writing. A facility which desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference must request an administrative hearing, pursuant to Section 22.G.6. 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.

22.E.4. Compliance with Regulations

A request for an informal conference or for an administrative review of the results of an informal conference shall not affect any nursing facility's obligation to comply with State licensing laws and regulations.

22.F. Amount of Penalties

The Division will determine the amount of any penalty to be imposed against a nursing facility according to the following classification system, or as most recently determined by statute or regulation:

Class	Grounds for Penalty	Amount	Repeat
Class I	Any failure to comply with State licensing laws, regulations, or 42 USC, Section 1396 r (b), (c), or  (d) that poses an immediate threat of death to a resident or residents; or impeding, interfering, or giving false information in connection with the enforcement of laws or regulations governing nursing facility licensure.	\$9.00 per bed per occurrence	\$10.00
Class II	Any failure to comply with State licensing laws, regulations or 42 USC Section 1396 r (b), (c), or or	\$8.00 per bed per occurrence	\$9.00

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(d) or any regulations imposed pursuant to these laws that poses a substantial probability of serious mental or physical harm to a resident or residents; failure to submit a plan of correction within ten (10) working days after receipt of a statement of deficiencies; or failure to take timely corrective action in accordance with a plan of correction or directed plan of correction.

Class III	The occurrence of a repeated deficiency that poses a substantial risk to a resident's or residents' health or safety	\$6.00 per bed per occurrence
	Any failure to comply with 42 USC Section 1396 r (b), (c) or (d) which is not included either as a Class I or Class II violation.	\$10.00 per bed

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\* "\$9.00 per bed per occurrence" means, for example, that a facility with 50 (fifty) beds would be assessed a penalty of \$450 (\$9.00 per resident x 50 beds) for a single instance of a Class I violation.

#### 22F.1. Penalties for Operation of a Nursing Facility Without a License

The minimum penalty for operating a nursing facility without a license is \$500 per day.

#### 22.F.2. Maximum Penalty

The maximum penalty the Division may impose in any instance in which it issues an Assessment of Financial Penalties subsequent to issuance of a Statement of Deficiencies to a nursing facility shall be \$10,000.

#### 22.F.3. Reduction or Delay of Penalties

Nursing facilities which are unable to immediately pay a penalty may apply to the Division of Licensing and Certification to have payment of that penalty delayed, paid in installments, or, in certain circumstances, reduced.

In order to have the payment of a fine delayed or paid in installments, a nursing facility must provide sufficient information, on forms provided by the Division of Licensing and Certification, 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 nursing facility must, on forms provided by the Division of Licensing and Certification, demonstrate that payment of the full amount of the penalty would result in a permanent interruption in the provision of necessary services to residents even if paid in installments or delayed.

## 22.G. Other Sanctions for Failure to Comply with Applicable Laws/Regulations

### 22.G.1. Refusal to Renew

When an applicant fails to demonstrate consistent compliance with applicable laws and regulations, the Department may refuse to issue or renew a license to operate a nursing facility.

### 22.G.2. Conditional License

If, at the expiration of a full or provisional license, or during the term of a full license, the facility fails to comply with applicable laws and regulations, and, in the judgment of the Division, the best interest of the public would be served, the Division may issue a conditional license, or change a full license to a conditional license. Failure by the conditional licensee to meet the conditions specified by the Department shall permit the Division to void the conditional license or refuse to issue a full license. The conditional license shall be void when the Division 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, corporation or association to whom a conditional license has been issued.

### 22.G.3. Emergency Suspension or Revocation

Whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health or safety of the persons living in or attending a facility, the Department may take action for an emergency suspension or temporary revocation of the license pursuant to either 5 M.R.S.A., Section 10004 or 4 M.R.S.A., Section 1153. If the Department acts pursuant to 5 M.R.S.A., Section 10004, it shall give written notice of such emergency suspension by delivering notice in hand to the licensee. If the licensee cannot be reached for personal service, the notice may be left at the licensed premises. Whenever a license is suspended by the Department under this emergency provision, the Department shall file a complaint with the Administrative Court within thirty (30) days if the Department determines that a longer period of suspension or revocation is required.

### 22.G.4. Revocation

Any license issued under these regulations may be suspended or revoked for violation of applicable laws and regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in or attending a facility. When the Division believes a license should be suspended or revoked, it shall file a complaint with the Administrative Court as provided in the Maine Administrative Procedures Act, Title V, Chapter 375.

22.G.5.Receivership

Pursuant to 22 M.R.S.A. Section 7931 et. seq., the Department may petition the Superior Court to appoint a receiver to operate a nursing facility in the following circumstances:

1. When the facility intends to close but has not arranged at least thirty (30) days prior to closure for the orderly transfer of its residents;
2. When an emergency exists in the facility which threatens the health, security or welfare of residents;  
or
3. When the facility is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal regulations to the detriment of the welfare of the residents.

22.G.6.Appeals

Any nursing 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 Procedures Act, 5 M.R.S.A. Section 1001 et. seq. or the Department's Administrative Hearing Manual. Administrative hearings will be held in conformity with the Department's Administrative Hearing Manual. A request for a hearing must be made in writing to the Director of the Division of Licensing and Certification, and must specify the reason for the appeal. Any request must be mailed within ten (10) days from receipt of the Department's decision to:

- a. issue a conditional license;
- b. amend or modify a license;
- c. void a conditional license;
- d. refuse to issue or renew a full license;
- e. refuse to issue a provisional license;
- f. stop or limit admissions;
- g. issue a directed plan of correction;
- h. affirm or modify an assessment of penalties after an informal review;
- i. deny application to reduce the amount or delay the payment of any penalty.

22.G.7.Public Information

## CHAPTER 22

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### ENFORCEMENT

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The Department will maintain an up-to-date listing of all sanctioned facilities. Upon final action on the imposition of a sanction, the Department will add the sanctioned facility to its listing. This information will be available to the public.

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**ALZHEIMER’S/DEMENTIA CARE UNITS**

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The purpose of this Chapter is to establish standards for Alzheimer’s/Dementia Care Units and to establish criteria for the Units, which provide Alzheimer’s/Dementia patients or residents with a positive quality of life, consumer protection and maximum individualized care that promotes rights, dignity, comfort and independence in the least restrictive environment.

Adherence to these rules does not exempt the facility from complying with its licensing or registration rules. These rules are in addition to the facility’s licensing rules.

**23.A. Definitions**

For the purposes of this Chapter, the following words will have the meanings indicated:

- 23.A.1. “Alzheimer’s/Dementia Care Unit” means a unit that provides care/services in a designated, separated area for patients and residents with Alzheimer’s Disease or other dementia that is able to be locked, segregated or secured to limit access by a resident outside the designated or separated area.
- 23.A.2. “Dementia” means a clinical syndrome characterized by a decline in mental function of long duration in an alert individual. Symptoms of dementia 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 can be caused by such diseases as: Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s and Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

**23.B. Alzheimer’s/Dementia Care Unit Program Disclosure**

**23.B.1. Disclosure Required**

An entity that offers to provide or provides care for individuals with Alzheimer’s disease or a related disorder through an Alzheimer’s/Dementia Care program shall disclose the form of care or treatment it provides that distinguishes it as being especially applicable to or suitable for those individuals. The disclosure must be made to the Department and to any individual seeking placement within an Alzheimer’s/Dementia Care Unit or the individual’s guardian or other responsible party. The Department shall examine and verify the accuracy of all disclosures as part of an entity’s license renewal procedure.

**23.B.2. Disclosure Content**

The disclosure must explain the additional care provided in the Alzheimer’s/Dementia Care Unit and include, at a minimum:

- a. The program’s written statement of its philosophy and mission that reflect the needs of individuals afflicted with dementia;
- b. The process and criteria for placement in, or transfer or discharge from the program;

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- c. The process used for the assessment and establishment of a plan of care and its implementation, including the methods by which the plan of care evolves and remains responsive to changes in an individual's condition;
- d. The program's staff training and continuing education practices;
- e. Documentation of the program's physical environment and design features appropriate to support the functioning of cognitively impaired adult individuals;
- f. The frequency and types of individuals' activities provided by the program;
- g. A description of family involvement and the availability of family support programs;
- h. An itemization of the costs of care and any additional fees; and
- i. A description of security measures provided by the facility.

**23.C. Standards for Alzheimer's/Dementia Care Units**

**23.C.1. Physical Design, Environment and Safety**

A home-like environment is encouraged for design of Alzheimer's/Dementia Care Units. The design and environment of a unit shall assist residents in their activities of daily living, enhance their quality of life, reduce tension, agitation and problem behaviors, and promote their safety.

**a. Physical Design**

In addition to the physical design standards required for the facility's license, an Alzheimer's/Dementia Care Unit shall include the following:

1. Adequate multipurpose rooms for dining, group and individual activities and family visits;
2. Secured outdoor space and walkways which allow residents to ambulate, but prevent undetected egress;
3. High visual contrasts between floors and walls and doorways and walls in resident use areas. Except for fire exits, door and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;
4. Floors, walls and ceilings shall be non-reflective to minimize glare;
5. Adequate and even lighting which minimizes glare and shadows and is designed to meet the specific needs of the residents; and

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6. A staff work area which includes a communication system such as a telephone or two-way voice actuated call system and space for charting and storage for resident records.
- b. Physical Environment and Safety
- The Alzheimer's/Dementia Care Unit shall:
1. Provide freedom of movement for the residents to common areas and to their personal spaces. The facility shall not lock residents out of or inside their rooms;
  2. Assure that all assistive equipment maximizes the independence of individual residents;
  3. Label or inventory all residents' possessions;
  4. Provide comfortable seating in the common use areas;
  5. Encourage and assist residents to decorate and furnish their rooms with personal items and furnishing based on the resident's needs, preferences and appropriateness;
  6. Individually identify residents' rooms and assist residents in recognizing their rooms with appropriate and personal items; and
  7. Only use a public address system in the unit (if one exists) for emergencies.
- c. Egress Control
1. The Alzheimer's/Dementia Care Unit shall develop policies and procedures to deal with residents who may wander. The procedures shall include actions to be taken in case a resident elopes;
  2. If locking devices are used on exit doors, 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 release when the following occurs:
    - (a) Upon activation of the fire alarm or sprinkler system;
    - (b) Power failure to the facility; or
    - (c) Bypassing a key button/key pad located at exits for routine use by staff for service.
  3. If the unit uses keypads to lock and unlock exits, then directions for their operation shall be posted on the outside of the door to allow individuals access to the unit. However, if the unit is a whole facility, then directions for the operation of the locks need not be posted on the outside of the door. The units shall not have entrance and exit doors that are closed with non-electronic keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

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d. Waivers

1. All physical plant construction or conversion waivers for **existing** Alzheimer's/Dementia Care Units are to be submitted in accordance with Chapter 2.I. of these regulations.
2. Any **new** construction or bed conversions for Alzheimer's/Dementia Care Units approved after the effective date of these regulations **are not** eligible for waivers.

23.C.2. Staffing and Staff Training

Every effort must be made to provide residents with familiar and consistent staff members in order to minimize resident confusion. All direct care staff assigned to the Alzheimer's/Dementia Care Unit shall be specially trained to work with residents with Alzheimer's Disease and other dementias.

a. Staffing

Only staff trained as specified in Subsections (2)(b) and (2)(c) of this rule shall be maintained and assigned to the unit. Staffing shall be sufficient to meet the needs of the residents and outcomes identified by the individual care plan and sufficient to implement the full day and evening care program. Staffing levels on the night shift will depend on the sleep patterns and needs of residents (without control of sleep by medications). Staffing shall be sufficient to enable each resident to maximize their functioning, self-care and independence.

b. Training

1. Pre-Service Training

The goals of training and education for staff of Alzheimer's/Dementia Care Units are to enhance staff understanding and sensitivity toward the unit residents, to allow staff to master care techniques, to ensure better performance of duties and responsibilities and to prevent staff burnout. The trainer(s) shall be qualified individuals with experience and knowledge in the care of individuals with Alzheimer's disease and other dementias. The facilities shall 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. In addition to the usual facility orientation, which would include such topics as basic resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer's dementia care, wandering/egress control, the eight (8) hours of classroom orientation should also include the following topics:

- (a) A general overview of Alzheimer's disease and related dementias;
- (b) Communication basics;
- (c) Creating a therapeutic environment;
- (d) Activity focused care;

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- (e) Dealing with difficult behaviors; and
- (f) Family issues.

2. Inservice Training

Ongoing inservice training shall be provided to all medical and non-medical staff who may be in direct contact with residents of the unit. Staff training shall be provided at least quarterly. The facility will keep records of all staff training provided and the qualifications of the trainer(s). Any training provided under the Alzheimer's/dementia curriculum may be credited toward the required twelve (12) hours of training/contact hours for CNAs. At least four (4) of the following topics shall be trained each quarter, so that after six months, staff will have been trained on all of the topics listed. Inservice training will be more comprehensive than what was provided during pre-service orientation.

- (a) An overview of Alzheimer's disease and related dementias, to include possible causes, general statistics, risk factors, diagnosis, stages and symptoms, and current treatments and research trends;
- (b) Communication, to include communication losses that result from Alzheimer's/dementia, non-verbal communication techniques (i.e. body language, facial expressions and touch), techniques to enhance communication, validation as an approach to communication and environmental factors that affect communication. Any training provided under the Alzheimer's/dementia curriculum may be credited toward the required twelve (12) hours of training/contact hours for CNAs;
- (c) Creating a therapeutic environment, to include safety issues, effective and ineffective strategies for providing care (do's and don'ts), background noise, staff behavior, consistency, wayfinding and temperature;
- (d) Activity-focused care, to include personal care (dressing, bathing and toileting), nutrition and dining, structured leisure (gross motor activities, social activities, crafts, sensory enhancement, outdoor activities, spiritual activities, normative activities, and music - see also Section 23.C.5. - Therapeutic Activities) and sexuality;
- (e) Dealing with difficult behaviors, which should include strategies to deal with common behavioral issues such as wandering, sundowning, catastrophic reactions, combativeness, paranoia, ignoring self-care; and
- (f) Family issues, such as grief, loss, education and support.



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23.C.3. Admission and Discharge

Facilities with Alzheimer's/Dementia Care Units shall have a written policy of preadmission screening, admission and discharge procedures. Admission criteria shall require, at a minimum, a physician's diagnosis of Alzheimer's Disease or other dementia. The policy shall include criteria for moving residents from within the facility, into or out of the unit. When moving a resident within the facility, or transferring a resident to another facility or placement, the facility shall take into account the resident's welfare. When a resident is moved into or out of the unit from within the facility, measures shall be taken by the facility to minimize confusion and stress resulting from the move. For those persons undiagnosed upon admission, but exhibiting signs and symptoms of dementia, the facility shall be required to have a diagnostic workup completed within forty-five (45) days following admission. The admission policy shall include criteria for moving residents from within the facility, into or out of the unit.

23.C.4. Assessments and Individual Care Plans

Specific methods and interventions to be used to accomplish the desired outcomes shall be disclosed in the care plan. Interventions used may include support groups, recreational therapy, occupational therapy, physical therapy and a variety of treatment modalities as indicated by the resident's particular needs. Outcomes for the individual care of each resident shall include:

- a. Promoting remaining abilities for self-care;
- b. Encouraging independence while recognizing limitations;
- c. Providing safety and comfort;
- d. Maintaining dignity by respecting the need for privacy, treating the resident as an adult and avoiding talking as if the resident is not present; and
- e. Any issue of a psychosocial nature related to the resident's preferred manner of living and receiving care.

23.C.5. Therapeutic Activities

Therapeutic activities can improve a resident's eating and sleeping patterns; lessen wandering, restlessness and anxiety; improve socialization and cooperation; delay deterioration of skills; and improve behavior management. To this end, all facilities with Alzheimer's/Dementia Care Units shall provide for activities appropriate to the needs of the individual residents. The following types of individual or group activities shall be offered at least weekly:

- a. Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);
- b. Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);
- c. Social activities (e.g., games, music, reminiscing, etc.);

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- d. Crafts (e.g., decorations, pictures, etc.);
- e. Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulation, etc.);
- f. Outdoor activities, weather permitting (e.g., walking outdoors, field trips, etc.);
- g. Spiritual activities;
- h. Normative activities (e.g., domestic tasks, household chores, etc.); and
- i. Therapeutic activities (e.g., music)

23.C.6. Social Services

A social worker or an assigned staff person shall provide social services to the resident and support to family members.

- a. The socialization of a resident shall be incorporated in the resident's care plan.
- b. The provision of support to the resident's family, including formation of family support groups, shall be offered by the facility if there are no such support groups available within a reasonable distance (e.g., ten-mile radius) from the facility.
- c. Every effort shall be made by the facility to maintain close positive relationships between family members and the resident, unless it would be injurious to the resident.

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## ADDENDUM

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### References:

1. Statutory authority for these regulations is found under the following Titles in the Maine Revised Statutes Annotated:

STATUTORY AUTHORITY: Title 1, Chapter 13, Section 401, 402, 407, 408;  
Title 22, Chapter 1, Section 3,6,42,47; Chapter 405, Sections 1811-1818, 1820, 1822, 1824-1830; Chapter 958-A, Sections 3477-3479; Chapter 1666, Sections 7921-7925; Chapter 1666A, Sections 7931-7938; Chapter 1666B, Sections 7941-7949; Chapter 1678, Sections 8551-8552; Title 32, Chapter 2, Sections 61, 7905; Title 5, Chapter 375, Subchapter 11-A, Section 1;22 MRSA §802, sub §4 Section 2;22 MRSA §802, sub §5; Title 22, §7944.

2. Additional references of use are:

Medicare Medicaid: Requirements for Long Term Care Facilities; 42 Code of Federal Regulations, Parts 420, 431, 442, 447, 483, 488, 489

The Department of Human Services, Bureau of Medical Services, Maine Medical Assistance Manual; Chapter I, Section 1 and Chapter II, Section 67

State of Maine Department of Human Services Principles of Reimbursement for Nursing Facilities

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STANDARDIZED NURSING FACILITY ADMISSIONS CONTRACT

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This contract is between \_\_\_\_\_ (the “Facility”) and \_\_\_\_\_ (the “Resident”). It will be signed by the Resident or someone authorized to sign for the Resident (the Resident’s Agent\*). It describes the Resident’s financial obligations, as well as other responsibilities and rights. It also describes the rights and obligations that apply to the Facility in the course of providing care to the Resident.

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

\*An individual who signs this contract as an Agent may or may not be able to make health care or other decisions on behalf of the Resident. The extent of the Agent’s authority depends on the nature of the legal relationship between the Agent and the Resident.

1. Rates and Charges

A. Generally

The Resident agrees to pay with his or her own funds (“private pay”) and/or through a third party payor (for example, Medicare, Medicaid or other insurance) for all items and services provided to the Resident by the Facility. Some services will be included in the Facility’s daily rate; some may be provided at the Resident’s request by the Facility at an additional charge; and some may be provided at the Resident’s request by third parties not employed by the Facility. These charges are described further on in this contract.

B. Services and Items That Are Included in the Daily Rate

The current daily rate at this Facility is \$\_\_\_\_\_. This daily rate includes a semi-private room o / private room o and includes meals and snacks that meet the daily nutritional and special dietary needs of the Resident, usual and customary nursing services and other services and items as listed in Attachment A.

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**C. Items and Services Provided by the Facility for an Extra Charge**

The Resident will be charged separately for additional items and services which the Resident or the Resident's physician, with the Resident's approval, requests and which are not included in the Facility's daily rate. These items and services may be provided by the Facility or by third parties. The cost of these items or services may or may not be covered by the Resident's insurer, if any. Many of the ordinary items and services for which the Resident may be charged are listed in Attachment B. Costs for certain items and services may be determined in advance, whereas others may vary depending on the needs of the Resident and may not be able to be determined at this time. When the Resident requests an item or service provided by the Facility that is not included in the daily rate, the Resident will be notified of the cost as soon as practicable.

**2. Paying for the Resident's Care**

**A. Who Can Be Required to Pay for the Resident's Care**

Payment for the Resident's care is the responsibility of the Resident. However, a Resident may have insurance, public benefits and/or other third party payors to assist the Resident with the payment of this obligation.

No other person, regardless of whether they are a family member, friend, neighbor, legal agent or guardian (even if they sign this document as an Agent for the Resident), can be required to pay for the Resident's care from his or her own funds unless that person knowingly and voluntarily agrees to pay for the cost of the Resident's care.

Other than amounts required under this contract, the Facility may not charge, solicit, accept or receive any gift, money, donation or other consideration as a precondition of the Resident's admission or to expedite the Resident's admission or to continue the Resident's stay once the Resident is admitted to the Facility.

The Facility requires the Resident or any other person responsible for making payments on the Resident's behalf to pay for the Resident's care under the terms of this contract within \_\_\_\_\_ days of receipt of the Facility's monthly bill. The Facility may not hold the Resident responsible for the payment of attorneys' fees or any other cost of collecting payment.

It is anticipated that the resident's care will be paid for by one or more of the following:

o The Medicare Program; (If the Resident is responsible for a co-pay, it will be explained to the Resident.)

o The Medicaid Program; (If the Resident is responsible for a Cost of Care, it will be explained to the Resident.)

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o Other insurance coverage(s); Please list:

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- o The Resident, with the Resident's own funds;
- o Another person, with the Resident's funds;

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Legal Authority: \_\_\_\_\_

- o Another person who has voluntarily agreed to pay with his/her own funds.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

The Resident agrees to provide all information requested by the Facility about the Resident's health and financial status in an accurate and timely manner and to update this information while the Resident is a resident at the Facility.

It is understood that Medicare and Medicaid will make the determinations concerning the Resident's medical and financial eligibility for payment by those programs. The Facility is not permitted to require the Resident to waive any rights to Medicare or Medicaid or require the Resident to give written or oral assurances that the Resident is not eligible for, or will not apply for Medicare or Medicaid benefits. The Resident is entitled to apply for Medicare or Medicaid at any time.

B. Increases in Charges and Fees

Any time the Facility makes any changes in rates or charges, responsibilities, services to be provided or any other items included in this contract, the Facility will provide the Resident with at least thirty (30) days advance notice.

3. Limitations on Liability

The Facility is obligated to take reasonable precautions to provide the Resident and the Resident's personal belongings with security, including providing a reasonable amount of space for the Resident's belongings. The Facility, however, is not responsible for any loss or damage to the Resident's personal belongings, including eye glasses and dentures, unless that loss or damage is caused by the negligent or willful action of the Facility staff.

4. Rights as a Resident

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### STANDARDIZED NURSING FACILITY ADMISSIONS CONTRACT

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As a resident of this Facility, the Resident has many rights under Federal and State law. These rights are included as part of this contract. The Facility is required to attach to this contract a complete copy of the state licensing rules establishing the Resident's rights. The Resident must sign a written acknowledgement that the Resident has been informed of these rights. No provision in this agreement may negate, limit or otherwise modify the rights listed in those rules. Some of these rights are described below.

#### A. Selection of a Doctor or Other Health Care Provider

The Resident may select his or her own doctor and other health care providers, provided that the Resident's doctor or other health care providers comply with any applicable rules or laws concerning the provision of care to the Resident and with the reasonable policies of the Facility.

#### B. Selection of a Pharmacy

The Resident has the right to obtain medication from the pharmacy of his or her choice, provided that the pharmacy complies with any applicable State rules and Federal regulations and with the reasonable policies of the Facility concerning procurement of medication.

#### C. The Resident's Personal Property and Financial Affairs

The Facility may not require the Resident to let the Facility manage, hold or otherwise control the Resident's money or property. The resident may, however, choose any person to manage his or her funds, including the Facility. Any of the Resident's funds that are managed by the Facility will not be commingled with Facility funds.

#### D. The Resident's Right to Make Complaints

The Resident may make complaints about his or her care in the Facility and the Resident may also suggest changes in the policies and services of the Facility. The Resident will not be harassed for making a complaint or suggesting a change in policy or service. The Resident may present his or her complaints orally or in writing to the Facility staff or the Facility administration. If the Resident prefers to make a complaint or suggestion to someone other than the Facility, the Resident may do so orally or in writing to one of the following agencies:



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Long Term Care Ombudsman Program  
One Weston Court  
P.O. Box 126  
Augusta, Maine 04332-0126  
Telephone and TTY: (207) 621-1079  
Toll Free: 1-800-499-0229

Legal Services for the Elderly  
Toll Free and TTY: 1-800-750-5353

Division of Licensing and Certification  
35 Anthony Avenue  
11 State House Station  
Augusta, Maine 04333-0011  
Toll Free: 1-800-383-2441  
TTY: (207) 624-5512

Bureau of Elder and Adult Services  
35 Anthony Avenue  
11 State House Station  
Augusta, Maine 04333-0011  
Toll Free: 1-800-262-2232  
TTY: 1-888-720-1925

E. Holding the Resident's Bed if the Resident Leaves the Facility

If Medicaid pays for part or all of the Resident's nursing facility care and the Resident is hospitalized, the Facility will hold the Resident's bed for up to a maximum number of days in accordance with State regulation. If the Resident is paying privately, or if the Resident's care at the Facility is covered by Medicare, the Facility will hold the Resident's bed at the Resident's option for as long as the Resident pays for it from his or her own funds at the Facility's then current rate.

F. Transfer and Discharge

The Resident has the right to remain here at the Facility and the Resident may not be transferred or discharged against the Resident's will, except for the following reasons:

(1) the Resident's condition has improved so that the Resident no longer needs the services the Facility provides; (2) the transfer or discharge is necessary for the Resident's welfare and the Resident's needs cannot be met by this Facility; (3) the health or safety of another individual in the Facility is endangered; (4) the Resident, after reasonable and appropriate notice, has failed to pay (or through his or her insurer[s] has failed to pay) for a stay at the Facility; or (5) the Facility ceases to operate.

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The Facility will notify the Resident and the Resident's family member, guardian or legal representative in writing thirty (30) days in advance of the transfer or discharge except in the following circumstances: (1) the health or safety of another individual in the Facility is endangered; (2) the Resident's health improves sufficiently to allow a more immediate transfer or discharge; (3) an immediate transfer or discharge is required by urgent medical needs; or (4) the Resident has not resided in the Facility for thirty (30) days. Notice in these situations will be provided as soon as practicable.

The notice will contain the reasons for the transfer or discharge and its effective date, the location to which the Resident will be transferred or discharged, and the Resident's rights regarding transfer or discharge. The notice will also tell the Resident how the resident can appeal the Facility's decision to transfer or discharge the Resident, by requesting a hearing, and will tell the Resident what agencies the Resident can call for assistance. The Resident has the right to receive sufficient preparation and orientation to ensure safe and orderly transfer from the Facility. This includes a post-discharge plan of care developed with the participation of the Resident and his or her family, if available. If the Resident is to be discharged involuntarily, the Facility will comply with current law in making discharge or transfer arrangements.

5. The Resident's Right to End This Contract

This contract terminates when the Resident is discharged from the Facility or if the Resident dies while residing at the Facility. The Resident's bill becomes due and payable \_\_\_\_\_ days from the date of the Resident's discharge from the Facility. Should the Resident die, the Resident's bill becomes due and payable \_\_\_\_\_ days after the Resident's death.

In the event the Resident dies while a resident of this Facility, please state whom the Facility should contact:

Family/Friend:

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APPENDIX A

STANDARDIZED NURSING FACILITY ADMISSIONS CONTRACT

Funeral Home:

\_\_\_\_\_

Unless the Resident has instructed the Facility otherwise, the Facility will immediately contact the individual(s) listed above to make funeral arrangements. If the Facility is unable to reach the individual(s), the Facility will contact the funeral home directly.

6. Identification Photo

The Facility may require a photograph of the Resident solely for the use of the Facility and its employees for the purpose of identification. The Resident consents to the use of such individual photographs of the Resident for identification purposes only. Photographs may not be used for any other purpose without the permission of the Resident for each specific use.

7. Changes in Law

Any provision of this Agreement 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, the Resident and the Facility will continue to fulfill their respective obligations under this contract consistent with the law.

IN WITNESS WHEREOF, the parties have executed this contract on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

This contract signed for admission may not require or encourage anyone other than the Resident to obligate himself or herself for the payment of the Resident's expenses. If anyone other than the Resident informs the Facility that he or she voluntarily wishes to guarantee payment of the Resident's expenses, he or she can only do so in a separate written agreement.

\_\_\_\_\_  
(Nursing Facility)

\_\_\_\_\_  
(Resident)

\_\_\_\_\_  
(Resident's Agent)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Rider(s) Attached:    o Yes           o No

**ATTACHMENT A**

**DESCRIPTION OF ITEMS AND SERVICES THAT ARE COVERED  
BY THE FACILITY'S DAILY RATE**

The items and services that will be covered by the daily rate at this Facility are based on the Resident's medical needs and depend in part on how the Resident will be paying for his or her care. The chart below summarizes what items and services are currently covered by the daily rate for the different payment sources. An "X" means that the item or service is covered by the Facility's daily rate. These items and services may change from time to time based on changes in Federal or State law and regulation.

**This Facility is required to complete this chart for all three payment sources.** The Facility should also be able to supply a list of fees charged for any service or item that is listed below but not covered by the Facility's daily rate.

Item or Service:	Payment Source:		
	Medicaid	Medicare	Private
<b>1. Medical Supplies and Durable Medical Equipment, including but not limited to:</b>			
Alcohol	X		
Alternating pressure pads, air mattresses, "Egg Crate" mattresses, gel mattresses	X		
Applicators	X		
Bandages, including bandaids and gauze bandages	X		
Basins	X		
Beds (standard hospital type) and bed rails	X		
Bed pans	X		
Blood pressure equipment	X		
Bottles (water)	X		
Canes	X		
Catheters and catheter trays (disposable)	X		
Chairs (standard, geriatric)	X		
Commodes	X		
Corner chair	X		
Cotton	X		
Crutches	X		
Cushions (e.g., comfort rings)	X		
Disinfectants	X		
Douche trays (disposable)	X		
Dressings	X		
Enema equipment	X		
Glucometer	X		
General services such as administration of oxygen and related medications, hand feeding, incontinency care, tray service and enemas	X		
Gloves (sterile and unsterile)	X		
Gowns	X		

**ATTACHMENT A**

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**DESCRIPTION OF ITEMS AND SERVICES THAT ARE COVERED  
BY THE FACILITY'S DAILY RATE**

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<b>Item or Service:</b>	<b>Payment Source:</b>		
	<b>Medicaid</b>	<b>Medicare</b>	<b>Private</b>
Ice bags	X		
Incontinent supplies (including Chux, Attends, Pampers, plastic pants, liners, etc., all sizes)	X		
Irrigation trays	X		
Non-prescription medications, including analgesics, Antacids, artificial tears, calcium supplements, cough syrups and expectorants, dietary supplements (including special dietary supplements), hemorrhoid preparations, iron supplements, laxatives, lotions, lubricants, ointments including petroleum jelly, powders (medicated and baby), sunscreen, suppositories, vitamins and non-prescription supplies for decubiti	X		
Oxygen, for emergency and as necessary	X		
Parenteral/enteral feedings	X		
Pillows	X		
Pitchers (water)	X		
Prone boards	X		
Rectal medicated wipes	X		
Restraints (posey, thoracic chest supports, tilt in space, Wedge pillows, etc.)	X		
Sheepskin	X		
Shower chairs and tub seats	X		
Specimen containers	X		
Sterile I.V. or irrigation solutions	X		
Stethoscope	X		
Suture sets	X		
Swabs, medicated or unmedicated	X		
Syringes and needles	X		
Tapes	X		
Testing materials to be used by staff of Facility	X		
Thermometers	X		
Tongue depressors	X		
Traction equipment	X		
Trapezes	X		
Tubes (gavage, lavage, etc.)	X		
Underpads	X		
Urinals	X		
Urinary drainage equipment and supplies (disposable)	X		

**ATTACHMENT A**

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**DESCRIPTION OF ITEMS AND SERVICES THAT ARE COVERED  
BY THE FACILITY'S DAILY RATE**

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<b>Item or Service:</b>	<b>Payment Source:</b>		
	<b>Medicaid</b>	<b>Medicare</b>	<b>Private</b>
Walkers	X		
Wheelchairs (standard, pediatric, "hemi" chairs, reclining wheelchairs)	X		
<b>2. Routine personal hygiene items and services as required to meet the needs of the Resident, including but not limited to:</b>			
Bathing services	X		
Bath soap	X		
Brush	X		
Comb	X		
Cotton balls	X		
Cotton swabs	X		
Dental floss	X		
Denture adhesive	X		
Denture cleaner	X		
Deodorant	X		
Disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or fight infection	X		
Moisturizing lotion	X		
Mouthwash	X		
Razor	X		
Routine hair hygiene services	X		
Routine nail hygiene services	X		
Sanitary napkins and related supplies	X		
Shampoo	X		
Shaving cream	X		
Soap	X		
Tissues	X		
Toothbrush	X		
Toothpaste	X		
Towels	X		
Washcloths	X		
<b>3. Basic personal laundry services</b>	X		
<b>4. Room/bed maintenance services</b>	X		

ATTACHMENT A

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DESCRIPTION OF ITEMS AND SERVICES THAT ARE COVERED  
BY THE FACILITY'S DAILY RATE

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Item or Service:	Payment Source:		
	Medicaid	Medicare	Private
5. Routine activities programs that are required to be provided by the Facility to meet the interests and physical, mental and psychosocial well-being of the Resident	X		
6. Routine transportation of the Resident or laboratory specimens to hospital or doctors' offices	X		
7. Other personal items and services			
Barber and beautician services			
Personal clothing other than gowns			
Telephone			
Television			
<b>Other</b>			

ATTACHMENT B

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**DESCRIPTION OF COMMONLY REQUESTED ITEMS AND SERVICES  
THAT ARE NOT COVERED BY THE FACILITY'S DAILY RATE**

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Certain items and services are generally not covered by the Facility's daily rate. It is not possible to make a complete list of those items and services, but the list below does contain those most commonly needed or requested.

The Resident will be billed separately by the Facility or by third parties providing the item or service. The cost or part of the cost for some items and services may be picked up by Medicaid, Medicare or by the Resident's other health insurance, if any.

The Resident should also refer to Attachment A to determine which of those items and services are covered by the Facility's daily rate and which are not.

<b>Item or Service</b>
Ambulance services
Audiology services
Dental services
Laboratory services
Occupational therapy
Optometry services
Pharmacy services
Physical therapy
Physicians' services
Podiatry services
Speech and language therapy
Radiology services
Respiratory therapy
Special care services, such as privately hired nurses or aides
Other