Dear Members,

As you know, on June 22, the Massachusetts Attorney General's Office released a final version of the new consumer protections **regulations** governing Assisted Living Residences ("AGO regulations"), which will be effective on July 17, 2026. We have commissioned this update from legal counsel to aid members in identifying documents that may need updating and other notable changes, to help you adapt to these new regulations.

Join Mass-ALA for a **webinar** presented by Attorney Heather Berchem, Partner at Harris Beach Murtha & Attorney Kevin Buono, Partner at Morrison Mahoney LLP, ***Navigating the New Consumer Protection Regulations: Guidance for Assisted Living Providers,*** **on August 17 from 1:00 pm – 3:00 pm.**

The Association's legal counsel has outlined below some of the more significant aspects of the new AGO regulations, many of which may require revisions to residency agreements, disclosure statements or other documents. This summary does not include every change or potential implication and is not intended to be legal advice. Because regulatory interpretations may vary and we do not yet know how the AGO will interpret or apply these regulations, considerations about how these regulations affect your communities' operations should be based on an evaluation of your existing agreements, documents and unique practices and, if appropriate, through consultation with your organization's legal counsel.

AMENDMENTS TO RESIDENCY AGREEMENTS AND OTHER DOCUMENTS

Outlined below are new provisions in the AGO regulations that will likely require revisions or additions to existing residency agreements. However, similar information may be included in your existing Disclosure of Rights and Services documents ("Disclosure Statement"), resident handbooks, or policies, and therefore those documents may also need to be reviewed and amended to ensure consistency and compliance with the AGO regulations.

Additionally, many of the new AGO provisions require that they be disclosed in "Clear and Conspicuous" type. Clear and Conspicuous is a defined term in the AGO regulations and should be carefully reviewed to ensure compliance. Generally, it requires that the language be of size or color contrast or otherwise stand out from the accompanying text.

The process of revising residency agreements to comply with the AGO regulations may raise concerns about whether it will be necessary to require *current* residents to sign amended residency agreements that comply with the AGO regulations. If a resident is treated in accordance with what the regulations require, but their residency agreement is inconsistent with the AGO regulations, that resident would need to prove some concrete injury in order to make a Chapter 93A consumer protection claim against a community. It will not be enough that there is an inconsistency between the text of their residency agreement and what the regulations require, so long as the community conducts itself in conformity with what the regulations require.

Having said that, residents who are admitted after the effective date of these AGO regulations (July 17, 2026) should enter into residency agreements whose text complies with the AGO regulations.

OTHER NOTABLE NEW OBLIGATIONS

- **Notice of new AGO regulations:** Communities must inform residents both orally and in writing in "Clear and Conspicuous" type at the start of the resident's tenancy that the AGO promulgated consumer protection regulations relating to ALRs. This can be accomplished by adding a brief statement in the residency agreement, again ensuring it meets the requirement of being "Clear and Conspicuous".

- **Copy of AGO regulations:** Communities are also required to provide a copy of the Attorney General's regulations to residents at the start of tenancy, again printed in Clear and Conspicuous type. The regulations require that a copy also be made available to residents "annually thereafter" and any time a resident reasonably requests a copy.

- **Statement regarding inability to pay monthly charges**: Residents must be informed in "Clear and Conspicuous writing" at the start of tenancy that if their income is insufficient to pay the full monthly charges and they fail to pay their rent, they could be subject to eviction proceedings. A statement to this effect can be inserted into the residency agreement to meet this requirement.

- **Clarity and itemization of charges:** The regulations enhance the specificity with which charges must be disclosed to residents. Resident charges on all bills must be "itemized" in a "Clear and Conspicuous manner," including "enumeration and breakout of the components of all bundled Fees."[v] It remains permissible to bundle multiple goods and services offered by a community into a single fee to be paid by residents, but the resident must be told clearly everything that is, and is not, included in a charge. Note that the Total Cost requirement set forth below may also require changes to attachments to the residency agreement or disclosure statement.

- **Fee increases:** The regulations prohibit charging a resident for services at rates that are not agreed to in the residency agreement or any amendment thereto. It is permissible to implement rate increases, but residents must be given 60 days' notice of such increases except where such increases result from a resident's increased care needs. The "conditions" that will trigger any automatic increase in charges must also be described in the agreement.

- **Charges upon resident's death:** When a resident dies, charges may only continue for 10 days beyond the date of death, which the regulations clarify begin when the resident's personal property has been removed from the unit.

- **Late fees:** The regulations specify that no interest or penalty for late payment of rent may be charged unless the rent is more than 30 days overdue.

- **Upfront fees:** The regulations permit communities to charge residents an upfront fee "to cover the cost" of an "initial assessment" of the resident "and intake required by 651 CMR 12.04." Residency agreements that require payment of an upfront fee at the start of a residency should describe the purpose for which the fee is charged. The Supreme Judicial Court said in 2026 that upfront charges for ALR-related purposes do not violate landlord-tenant or consumer protection law.

- **Third-party guarantees:** The regulations prohibit requiring a resident to obtain a third-party guarantee from a relative or other third person "as a condition of initial or continued occupancy," "notwithstanding" a community's right to decline who cannot provide verification of sufficient income, benefits, and/or assets to pay for all monthly charges. Any guarantee must be strictly voluntary." Guarantees should therefore not appear in the text of residency agreements, and should be segregated as a standalone document and clearly marked as voluntary.

- **Disclosure of an arbitration provision:** Under the regulations, asking residents to agree to decide disputes with the community in binding arbitration rather than in civil court remains permissible. Communities must, however, disclose to the resident orally and in writing the existence of any arbitration provision within any document that residents sign, whether or not such provision appears in the residency agreement or in a separate attachment. The impact of signing such a provision must also be disclosed, including that the resident "may be forfeiting their right as a consumer to prosecute a claim under M.G.L c.93A in court and instead may be required to submit to mandatory arbitration to prosecute any such claim."

- **Documents in a language the resident understands:** The regulations require that any documents included as part of the application, admission, or leasing process must be printed in a language the resident understands. This is in addition to the existing requirement that they not be in a type smaller than 14 point.

- **Disclosure of total cost:** The regulations require that in connection with any marketing or solicitation of residents, the actual Total Cost that a resident will pay must be disclosed in Clear and Conspicuous type at the time of initial presentation of the price and any subsequent presentation. "Total Cost" is defined as the maximum price the resident must pay, inclusive of all fees, charges, or other expenses. This requirement suggests that there should be no daylight between the cost of residency quoted to a resident during the sales process and the ultimate cost invoiced to a resident once a residency begins, so it is encouraged that residents receive the most up-to-date information about costs prior to signing based on incoming information provided to communities by residents and their families.

- **Interactive dialogue regarding public assistance program participation:** The regulations require that communities engage in an "interactive dialogue" upon a resident's request to participate as a member in a Senior Care Organization, a PACE program, a Group Adult Foster Care program or similar program.
- **Prompt response and resolution of grievances:** The regulations make it an unfair or deceptive act to fail to take prompt action to resolve a resident grievance or to respond promptly to the extent possible to all requests or inquiries made by a resident, legal representative, or Ombudsman.
- **Resident records:** The regulations require communities to make a resident's file available to the resident (or representative) for review within 24 hours. When residents request a physical copy of their file, communities must provide it within "2 business days."

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EOAI has informed us in writing that it understands that providing the agency 30-day advance notice of changes to relevant documents (as required by EOAI regulations at 651 CMR 12.04(13)(b)) is not possible given the timeline given the July 17 effective date. Therefore, EOAI will not be penalizing communities for not complying with the required 30-day notice of alterations to documents. EOAI is asking that communities submit their updated documents as soon as practicable.

If you have any questions, please contact us at Mass-ALA@mass-ala.org.

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