

# KROKIDAS & BLUESTEIN

## ATTORNEYS

### HEALTH LAW CLIENT ALERT

#### EOEA RELEASES FINAL ASSISTED LIVING RESIDENCE REGULATIONS

On January 30, 2015, the Massachusetts Executive Office of Elder Affairs (“EOEA”) published final amendments to its assisted living residence (“ALR”) regulations at [651 CMR 12.00](#) (the “Final Regulations”). The Final Regulations contain several important changes affecting the operation of ALRs. This client alert highlights some of the more practical impacts of the Final Regulations. Please note that although EOEA expects ALRs to immediately begin implementing the regulatory changes in good faith, the deadline for full compliance is July 1, 2015. In addition, any new forms or documentation required by the Final Regulations must be submitted to the EOEA Assisted Living Certification Unit by that date.

#### Changes to Policies and Procedures:

ALRs will likely need to make the following key changes, among others, to their policies and procedures:

1. Initial screenings must be performed by a Registered Nurse, not a Service Coordinator.
2. ALRs’ self-administered medication management (SAMM) policies must include an in-depth evaluation and observation during the initial screening of the resident.
3. Facilities must implement a controlled substance policy.
4. Disaster and emergency preparedness plans as well as policies on reporting emergencies to EOEA will need to be updated to reflect regulatory changes, such as the new required elements for preparedness plans, the amended definition of Serious Negative Effect, and the requirement to report of all details associated with an incident.
  - a. The definition of Serious Negative Effect now includes both incident-specific and facility-related events.
5. Staffing and training policies must provide for a quarterly assessment of staffing levels and additional staff orientation on elder abuse.

Some of these changes to policies and procedures should also be reflected in other documents, such as residency agreements and residency handbooks.

#### New Special Care Residence (“SCR”) Requirements:

SCRs must meet the following additional requirements:

1. SCRs can never have fewer than two staff members in the unit. (Note that if staff are required to remain on the unit, wage law likely requires paid breaks and lunch time.)
2. SCRs must provide a multipurpose activity space.
3. Planned activity programs must include structured activities at least three times in a 24-hour period, seven days per week.

Effect on Residency Agreements:

Residency agreements and resident handbooks will need to be revised consistent with the Final Regulations. In particular:

1. Refund policies for Administrative Fees (as defined in the Final Regulations) must be addressed.
2. Resident materials should describe the procedure for notification of a resident when the ALR is no longer an appropriate care environment.

This is also a good time for an ALR to make any other updates or corrections to its residency agreements and/or handbook that may be needed. Changes to resident materials should be reflected in the ALR's policies and procedures as well.

Changes from the Proposed Regulations:

A few controversial provisions included in the proposed ALR regulations were either deleted or otherwise changed by EOEА in the Final Regulations.

1. EOEА chose not to include its proposed prohibitions against ALRs admitting or retaining any resident in need of skilled nursing care (as defined in the regulations) for more than ninety consecutive days. Please note that the Final Regulations did not clarify the long-standing regulatory definition of Certified Provider of Ancillary Health Services.
2. The compliance date for new SCRs to provide a secure outdoor space has been deferred to October 1, 2015.
3. The Final Regulations remove regulatory references to compliance with EOEА sub-regulatory guidance.

We will continue to monitor EOEА for new or revised forms and guidance resulting from the Final Regulations. If you have any questions about the Final Regulations or would like assistance in determining how they may impact your organization, please contact Attorneys Jennifer Gallop ([jgallop@kb-law.com](mailto:jgallop@kb-law.com)), Robert Griffin ([rgriffin@kb-law.com](mailto:rgriffin@kb-law.com)), Tony Cichello ([acichello@kb-law.com](mailto:acichello@kb-law.com)), or Emily Kretchmer ([ekretchmer@kb-law.com](mailto:ekretchmer@kb-law.com)).