

## **Boardman Cottage Resident Rights**

Residents Rights taken from "Regulations Governing the Licensing and Functioning of Assisted Housing Programs, Level III Residential Care Facilities".

### **5 RESIDENT RIGHTS**

- 5.1 Resident rights.** The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices.
- 5.2 Freedom of choice of provider.** For services and supplies not provided by the licensee, each resident has the right to select the provider of his/her choice.
- 5.3 Rights regarding transfer and discharge.** Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:
- 5.3.1** When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution:
  - 5.3.2** A resident's continued tenancy constitutes a direct threat to the health or safety of others;
  - 5.3.3** A resident's intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there;
  - 5.3.4** A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident;
  - 5.3.5** When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; *or*

**5.3.6** The license has been revoked, not renewed, or voluntarily surrendered.

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

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

**5.4.2** The effective date of the transfer or discharge;

**5.4.3** Notice of the resident's right to appeal the transfer or discharge as set forth in Section 5.28;

**5.4.4** The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program;

**5.4.5** In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Behavioral and Developmental Services;

**5.4.6** The resident's right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson.

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

**5.6 Leaves of absence.** When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.4 are present and the resident or resident's legal representative has been given notice as may be required in these regulations.

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

- 5.7.1** Residents of residential care facilities shall not be required to give advance notice.
- 5.8 Right to communicate grievances and recommend changes.** The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department.
- 5.9 Right to manage financial affairs.** Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident.
- 5.10 Right to freedom from abuse, neglect or exploitation.** Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation.
- 5.11 Rights regarding restraints and aversive conditioning.** There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section.
- 5.11.1** Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall.
- 5.11.2** In the case of a person with mental retardation, the provider must comply with the requirements of the *Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation* and the *Regulations Governing the Use of Restraints in Community Settings*. These regulations are promulgated and enforced by the Department of Behavioral and Developmental Services.
- 5.11.3** For any resident who is a client of the Department of Behavioral and Development Services due to his/her mental illness, the facility/program shall comply with the *Rights of Recipients of Mental Health Services*, promulgated and enforced by the Department of Behavioral and Development Services.

- 5.12 Right to confidentiality.** Residents' records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other persons except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals, groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time.
- 5.13 Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility.
- 5.14 Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication.
- 5.15 Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations.
- 5.16 Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others.
- 5.17 Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider's ability to meet the purpose of these rules.

- 5.18 Couples.** A couple residing in an assisted housing program has the right to share a room.
- 5.19 Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services, which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear.
- 5.20 Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident's duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident.
- 5.21 Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation.
- 5.22 Right to information regarding deficiencies.** Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to decisions to issue Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action.
- 5.23 Notification of rights.** The provider shall inform each resident and legal representative prior to or at admission or within thirty (30) calendar days of any changes to Section 5 of these rights and shall provide them with a copy thereof. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights.
- 5.24 Bill of rights for persons with mental retardation.** Facilities/programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. § 5601 *et seq.*
- 5.25 Mandatory report of rights violations.** Any person or professional who provides health care, social services or mental health services or who administers a long term care facility or program who has reasonable cause to suspect that the regulations pertaining to residents' rights or the conduct of resident care have been violated, shall immediately report the alleged

violation to the Department of Health and Human Services (800 383-2441) and to one or more of the following:

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

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

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

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

**5.26.1** Permit directly, or through agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden.

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

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

**5.28 Right to appeal an involuntary transfer or discharge.** The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an

involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to Assisted Living Licensing Services for submission to the Office of Administrative Hearings, 11 State House Station, and Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing.

**5.29 Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident's legal representative, as defined in Section 2.28 of these Regulations.

### **5.30 Resident councils**

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

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

**5.30.3** The council has the following rights:

**5.30.3.1** To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved;

**5.30.3.2** To establish procedures that will ensure that all residents are informed about and understand their rights;

**5.30.3.3** To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement;

**5.30.3.4** To help identify residents' problems and recommend ways to ensure early resolution;

**5.30.3.5** To inform the administrator of the opinions and concerns of the residents;

- 5.30.3.6** To find ways of involving the families and residents of the facility;
- 5.30.3.7** To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and
- 5.30.3.8** To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request.

**5.31 Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies.



**BOARDMAN COTTAGE  
Residents Rights Acknowledgement**

I \_\_\_\_\_ acknowledge receipt of a copy of Residents Rights. I further state that these rights are known to me and I have had my questions answered about these rights.

---

Resident Signature \_\_\_\_\_ Date \_\_\_\_\_

---

Signature of Legal Representative \_\_\_\_\_ Date \_\_\_\_\_

---

Witnessed and/ or explained by \_\_\_\_\_ Date \_\_\_\_\_