



April 28, 2026

Via email to AGOregs@mass.gov

Andrea Joy Campbell
Attorney General
Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

Re: Request for Comments on Draft 93A Regulations Related to Assisted Living Residences

Dear Attorney General Campbell,

The National Consumer Law Center (on behalf of its low-income clients) submits the following comments¹ in response to the request for comments on draft 93A regulations related to Assisted Living residences. We appreciate that the Attorney General is engaging in an extensive examination of the unique issues facing people in Assisted Living residences, and we strongly support the Attorney General's initiative to establish consumer protections for Assisted Living Residences under M.G.L. c. 93A.

While we support the regulations generally, we suggest that the language of the draft regulations be strengthened to better align with the mirroring protections in the federal Nursing Home Reform Act (NHRA). The draft 93A language, as proposed, only prohibits Assisted Living Residences from *requiring* a third-party guarantee of payment, and not also *requesting or requiring* a third-party guarantee, as prohibited in the federal nursing home regulations. This loophole may cause families to still be at risk of financial hardship if not remedied in the final regulations.

Specifically, we recommend that the Attorney General update the regulations to prohibit Assisted Living Residences under M.G.L. c. 93A, §2(a) from *requesting* or requiring a resident or

¹ These comments were written by Anna Anderson and Berneta Haynes. Jenifer Bosco of NCLC provided editorial oversight.

prospective resident to provide a third-party guarantee of payment as a condition of admission or continuous stay. Specifically, we recommend the language be updated to the following:

*“It is an unfair or deceptive act in violation of M.G.L. c. 93A, §2(a) for a Sponsor, Owner, Operator, Manager, or Lessor of an Assisted Living Residence...to **request** or require a Resident or a prospective Resident, or their Legal Representative, as a condition of initial or continued occupancy to provide a third-party guarantee of payment to the Assisted Living Residence...”* (emphasis added to highlight the recommended change).

The NHRA prohibits nursing homes and other skilled nursing facilities from requiring third-party guarantees of payment, and the NHRA’s implementing regulations further prohibit facilities from also requesting a third-party guarantee of payment as a condition of admission or continuing stay.² These protections help ensure that family members and caregivers are not on the hook for their loved ones’ costly nursing home care.

Unfortunately, Assisted Living Residences are not covered by the NHRA. This gap in protection leaves residents of Assisted Living Residences and their families vulnerable to the same predatory debt collection practices seen in the nursing home space.³ The draft 93A regulations, which make it a violation to require a third-party guarantee, would help address this gap in protection, but could still be strengthened to achieve better outcomes for residents and caregivers.

The history of these practices in the nursing home space is instructive as to what remains to be addressed for Assisted Living Residences. When the NHRA and its corresponding regulations were first drafted, the language initially only prohibited facilities from requiring a guarantee. Unfortunately, nursing homes were able to exploit this language and find a workaround to hold third parties financially responsible by including “voluntary requests” for guarantees.⁴ Because the provisions were presented as “voluntary,” courts held that these did not violate the NHRA, and facilities were able to circumvent federal law and regulations.⁵ But in the context of placing a loved one in care, there is no such thing as a truly “voluntary” financial guarantee. As a result, even when presented with an agreement that is drafted as a “voluntary” guarantee of payment,

²42 U.S.C. § 1395i-3(c)(5)(B)(i); 42 C.F.R. § 483.15(a)(3).

³ Consumer Financial Protection Bureau, [Issue Spotlight: Nursing Home Debt Collection](#) (Sep. 8, 2022); Anna Anderson, Eric Carlson, National Consumer Law Center, Justice in Aging, [Nursing Home Debt Collection Practices Put Residents’ Family and Friends at Risk](#) (Oct. 2024); Anna Anderson, Eric Carlson, National Consumer Law Center, Justice in Aging, [FAQs: Can a Nursing Home Force a Resident’s Family and Friends to Pay the Bill?](#) (Sep. 27, 2023).

⁴ See *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632 (1996); Katherine C. Pearson, [The Responsible Thing to Do About “Responsible Party” Provisions in Nursing Home Agreements: A Proposal for Change on Three Fronts](#), 37 U. Mich. J.L. Reform 757, 783 (2004).

⁵*Id.*

families feel compelled to sign, risking their own financial stability, just to ensure their loved one is admitted or allowed to stay in the facility.⁶ The financial hardships that this loophole caused ultimately led to additional changes to the NHRA's corresponding regulations in 2016 to further ban requests for guarantees.⁷

In light of this history and what we have seen occur in practice, we urge the Attorney General to avoid these devastating potential outcomes and amend the language in 940 CMR 40.04(3)(f) to match the federal standard by banning Assisted Living Residences from *requesting or requiring* a third-party guarantee of payment. Creating consistency between the language and standards for both Assisted Living Residences and nursing homes will also prevent confusion for consumers transitioning between levels of care and make implementation and enforcement easier.

Additionally, should the Attorney General wish to go even further to ensure that Massachusetts consumers are protected from unfair or deceptive collection and billing practices in Assisted Living Residences, we recommend including similar language from the newly updated Centers for Medicare and Medicaid Services (CMS) State Surveyor Guidance in the final 93A regulations. The new CMS State Surveyor Guidance makes it clear that “any language contained in an agreement that seeks to hold a third party personally responsible for paying the facility would violate this requirement.”⁸ Similar relevant language could easily be implemented and included in the final 93A regulations. The CMS Guidance provides these specific examples of noncompliant language in nursing home admission agreements that would violate federal regulations:

- *“Language that holds both (1) the resident and (2) the representative or other individual jointly responsible for any sums due to the facility...”*
- *“Language that holds the representative or other third-party individual personally liable for breach of an obligation in the agreement, such as (1) failing to apply for Medicaid in a timely and complete manner or (2) allowing someone other than a signatory to the agreement to spend the resident’s resources that would be used to pay the nursing home.”*
- *“Language that does not specifically mention a third-party guarantee but that implies the resident could be discharged if the representative does not voluntarily agree to personally pay to prevent the discharge.”*
- *“Language that holds the representative or other individual personally liable for any amounts not paid to the facility in a timely manner because the representative or other*

⁶ Consumer Financial Protection Bureau, [Issue Spotlight: Nursing Home Debt Collection](#) (Sep. 8, 2022); Katherine C. Pearson, [The Responsible Thing to Do About “Responsible Party” Provisions in Nursing Home Agreements: A Proposal for Change on Three Fronts](#), 37 U. Mich. J.L. Reform 757, 783 (2004).

⁷See *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632 (1996); Katherine C. Pearson, [The Responsible Thing to Do About “Responsible Party” Provisions in Nursing Home Agreements: A Proposal for Change on Three Fronts](#), 37 U. Mich. J.L. Reform 757, 783 (2004).

⁸Centers for Medicare & Medicaid Services, [Medicare and Medicaid Programs: Reform of Requirements for Long-Term Care Facilities](#), 81 Fed. Reg. 68,688 (Oct. 4, 2016).

individual did not provide accurate financial information or notify the facility of changes in the resident's financial information.”

These examples represent common deceptive practices in nursing home admission agreements that the Attorney General can preemptively bar in Assisted Living Residence agreements by adopting more descriptive language. Protecting the financial stability of caregivers and residents of Assisted Living Residences is essential to elder justice. These changes will help ensure that Massachusetts remains a leader in protecting consumers, including older adults and caregivers, from unfair financial practices.

Thank you for seeking information about this important topic. For more information about these comments or to discuss this issue, please contact Anna Anderson at aanderson@nclc.org.

Respectfully submitted,

National Consumer Law Center (on behalf of its low-income clients)