



*Wes Moore, Governor · Aruna Miller, Lt. Governor · Ryan Moran, DrPH, MHSA, Acting Secretary*

March 11, 2025

The Honorable Nicholas Kipke  
Lowe House Office Building, Room 165  
6 Bladen St., Annapolis, MD 21401

Dear Delegate Kipke:

Thank you for reaching out on the intersection of the Maryland Department of Health's (Department) upcoming regulations for assisted living providers and House Bill (HB) 828 - Health Care Facilities - Rights of Comprehensive and Extended Care Facility Residents - Hospice Comfort Care. The Department does believe that it would be possible to address the concerns of HB 828 through regulations.

The Department's Office of Health Care Quality recently completed a formal public comment period addressing regulations for assisted living providers. These regulations were published in the Maryland Register on [January 24, 2025](#). In response to formal comments and the discussion related to HB828, OHCQ has proposed a non-substantive change to Regulation .38 of the proposal which relates to restraints (see below). The change adds a new Section H, which clarifies that hospice regulations apply when an assisted living resident is under the care of a licensed general hospice program but is physically located in their assisted living facility. We believe this addresses the concern raised by HB828 and the advocates.

**Technical Assistance to Assisted Living Providers:**

After the regulations are finalized, OHCQ will embark on a statewide training campaign for all 1,650 licensed assisted living providers. OHCQ will add this change to the training materials as the new regulations are rolled out. OHCQ will teach that the hospice regulations apply when a resident is under the care of a licensed general hospice program but is physically located in their assisted living facility.

**Scenario (for potential inclusion in FAQs):**

For example, some inpatient hospice patients no longer meet inpatient criteria, and get transferred to an assisted living facility, under the care of hospice. In this scenario, the hospice doctor would write orders for pain control and agitation for the hospice patient, which may be different from what is typically ordered for an assisted living resident. The hospice orders may contain strong pain medications or a lap belt restraint for safety. The hospice nurse would

instruct the assisted living staff on carrying out the orders. The assisted living staff has 24/7 responsibilities, but the hospice nurse may only check on the resident three times a week. The assisted living regulations will be very clear now that the hospice regulations also apply in this scenario, and there will not be confusion.

**Proposed COMAR 10.07.14 Language in the Maryland Register 1.24.2025:**

**.38 Restraints.**

*A. The resident has the right to be free of restraints used in violation of this chapter.*

*B. A protective device as defined in Regulation .02B of this chapter is not considered a restraint.*

*C. Improper Use of Chemicals or Drugs. Chemicals or drugs may not be used for residents in the following ways:*

- (1) In excessive dose, including duplicate drug therapy;*
- (2) For excessive duration, without adequate monitoring;*
- (3) Without adequate indications for its use; or*
- (4) In the presence of adverse consequences which indicate the dose should be reduced or discontinued.*

*D. Improper Use of Physical Restraints. Residents may not be physically restrained:*

- (1) For discipline or convenience; or*
- (2) If a restraint is not ordered by a **[[health care practitioner]]** physician to treat the resident's symptoms or medical conditions.*

*E. Restraint Orders.*

*(1) Any restraint shall be ordered by a **[[health care practitioner]]** physician and shall specify:*

- (a) The purpose of the restraint;*
- (b) The type of restraint to be used; and*
- (c) The length of time the restraint shall be used.*
- (2) A resident may not have an as-needed restraint order.*
- (3) Orders for the use of a restraint shall be time specific.*
- (4) A resident may not remain in a restraint for more than 2 hours without a change in position and toileting opportunity.*
- (5) If an order for the use of a restraint is to be continued, the order shall be renewed at least every 7 calendar days by a physician.*
- (6) The delegating nurse shall provide training to staff in the appropriate use of the restraint ordered by the **[physician]** health care practitioner.*

*F. Bed Rails. Bed rails may be considered a restraint depending upon the reason for the use of bed rails and how the bed rails are used. This determination is based upon the resident and the effect that bed rails would have upon the resident, as documented in the resident's record.*

*G. The program shall notify the resident's family or the resident representative each time a restraint is used.*

H. When the resident is under the care of a general hospice care program licensed by the Department and is physically located in an assisted living program licensed by the Department, the general hospice program and the assisted living program must comply with the requirements of this chapter, COMAR 10.07.21, and federal regulations.

With the addition of this change to regulation . 38 *Restraints*, the Department believes that the intent of this bill is addressed. If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at [sarah.case-herron@maryland.gov](mailto:sarah.case-herron@maryland.gov).

Sincerely,

A handwritten signature in blue ink that reads "Ryan B. Moran". The signature is written in a cursive style with a horizontal line underneath the name.

Ryan B. Moran, DrPH, MHSA  
Acting Secretary