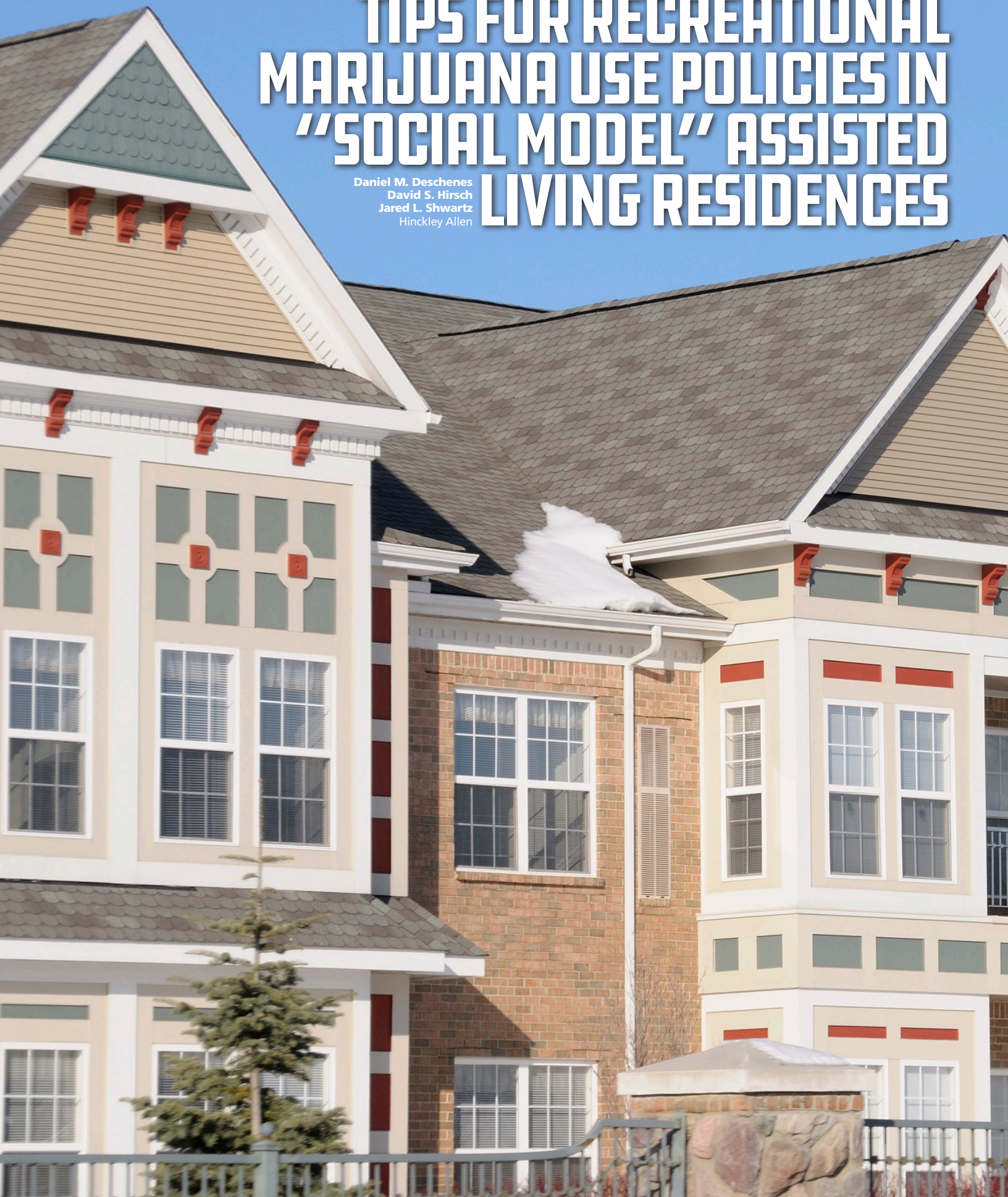


# TIPS FOR RECREATIONAL MARIJUANA USE POLICIES IN "SOCIAL MODEL" ASSISTED LIVING RESIDENCES

Daniel M. Deschenes  
David S. Hirsch  
Jared L. Schwartz  
Hinckley Allen





As more states consider legalizing recreational marijuana, assisted living residences (ALRs) face a unique challenge: residents that chose to use this product. Formal guidance regarding how ALRs should address a resident's use of recreational marijuana is scarce. However, facilities should have a written policy in place that (i) establishes a resident's rights to use marijuana, (ii) sets guidelines and parameters to ensure the safety of all residents, and (iii) is consistent with ALR licensure requirements.

By crafting policies that address these key issues, ALRs can reduce their legal and operational risks. This article examines Massachusetts ALR regulations as well as its recreational marijuana laws and regulations with a view toward determining the policies certain ALR operators outside of Massachusetts should adopt if recreational marijuana is legalized in their states.

Massachusetts recognizes the "social model" of ALR resident care. The goal of ALR care in the Commonwealth of Massachusetts is to provide residents with the maximum amount of independence possible within a residential setting, supported by certain personal care services.

Massachusetts laws and regulations governing ALRs enumerate a number of resident rights that must be honored by all facilities. These resident rights include:

- the right to privacy within the resident's unit, while abiding by ALR rules reasonably designed to promote the health, safety, and welfare of other residents;
- the right to retain and use personal property within the resident's living space; and
- the right to exercise the resident's civil liberties.

These particular rights suggest that an ALR must permit resident use of recreational marijuana, underscoring the need to have a written policy that balances the right to use with the welfare of the resident community at-large.

Here are three key items to address in any policy discussing the use of marijuana at an ALR:

### 1. LIMIT PERMITTED AREAS FOR RECREATIONAL MARIJUANA USE

A marijuana policy should explicitly designate the areas within the ALR in which recreational use is permitted. Provided that an ALR has legitimate health and safety concerns regarding marijuana use in common areas within the facility, residences would be justified in prohibiting recreational marijuana use in these areas, thereby restricting marijuana use to a resident's unit. Further, ALRs are authorized to prohibit the use of recreational marijuana in outdoor common space and public ways abutting the residence, just as Massachusetts law prohibits recreational marijuana use in any public area.

### 2. SPECIFY THE TYPES AND AMOUNTS OF MARIJUANA THAT RESIDENTS ARE ALLOWED TO POSSESS

An ALR marijuana policy should also address the permitted types and amounts of marijuana that residents are allowed to possess in their units. These policies should be consistent with ALR tobacco and smoking policies. As smoke and vapors may pose a nuisance to the general resident population, ALRs may determine that only edible forms of marijuana may be consumed within the unit. Such a policy would strike a reasonable balance between upholding the rights of residents to use recreational marijuana, while promoting the health and welfare of the entire ALR community.

Similarly, ALR policies should prescribe the amount of marijuana that residents are permitted to store in their unit at any given time. This particular policy should be consistent with limits provided for under state law. In Massachusetts, for example, ALRs should limit the amount of recreational marijuana that a resident may possess and store within their unit to 10 ounces, which mirrors the legal limit that an individual is authorized to store in their home under Massachusetts law.

### 3. SET REQUIREMENTS FOR STORAGE OF RECREATIONAL MARIJUANA IN A RESIDENT'S UNIT

Finally, since ALR residents may have dementia or similar diagnoses affecting their resident's cognitive abilities, making it critical that a facility's recreational marijuana policy requires secure storage of mar-

ijuana to minimize the risk of unauthorized access or use. Massachusetts law requires that recreational users possessing more than one ounce of product store their marijuana in a locked location. To protect the health and welfare of the ALR community, an ALR marijuana policy should require residents to keep all recreational marijuana, regardless of amount, in a lockbox within their unit. Additionally, the amount of marijuana in a resident's possession should be logged on a regular basis for review by the ALR. These measures balance the rights of residents to store recreational marijuana in their unit with the need to protect the welfare and safety of other residents at the ALR.

Operators of Massachusetts ALRs should contact legal counsel to discuss and craft recreational use policies consistent with resident rights and the duties of the ALR under state law and regulations.



*Daniel M. Deschenes' practice is focused on civil litigation with an emphasis on construction matters. He advises owners, contractors, and developers in various phases of the construction process, including negotiation and arbitration of contract disputes and contract development.*



*David S. Hirsch focuses his practice on general corporate law, with dedicated emphases on mergers and acquisitions, corporate finance, commercial lending, and securities law.*



*Jared L. Shwartz advises businesses on a wide variety of matters, including governance, entity choice and formation, mergers and acquisitions, contract and financing negotiations, and related transactions.*