Assisted Living: An Uncharted Course

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Introduction

Over the past decade, assisted living has become an increasingly popular and viable part of the long-term care system. Embracing the philosophy of enhancing residents' capabilities as well as their privacy, autonomy, dignity, and encouraging the uniqueness of each resident, assisted living has grown into an attractive alternative to the traditional nursing home style of care.

But what exactly is this assisted living phenomenon?

The Assisted Living Facilities Association of America (ALFAA) defines “assisted living” as

>a special combination of housing and personalized health care designed to respond to the individual needs of those who need help with activities of daily living. Care is provided in a way that promotes maximum independence and dignity for each resident and involves the resident’s family, neighbors, and friends. “

Assisted living generally includes:

- group or congregate living arrangements that provide room and board as well as social and recreational opportunities;
- assistance to residents who need help with personal care needs and medications;
- availability of protective oversight or monitoring; and
- help around the clock and on an unscheduled basis.

The facilities that provide assisted living are called by a multitude of names including “residential care facilities, personal care homes, catered living facilities, retirement homes, homes for adults, board and cares, domiciliary care homes, rest homes, community residences” or sheltered care, adult congregate living facilities and enriched or residential housing. As a result, consumers and advocates are often confused.

The common denominator of all assisted living arrangements is that they all include housing plus some degree of supportive services, and have a “residential nature.”

In early summer, 1995 a Consumer Reports reporter, investigating 27 assisted living facilities throughout the country, asked the Commission to examine 13 assisted living facilities' contracts for an article she was writing for the October 1995 issue. This request was a result of the Commission’s work in 1982-1984 on a project to develop a model act for regulating board and care homes, and our work on Continuing Care Retirement Communities (CCRCs). The Consumer Reports investigation focused on what is covered in an assisted living contract, how the facility is presented in advertisements and in interviews, and the article included her personal observations. Our task was to examine and analyze a selection of contracts, and to find out exactly what an individual buys when he/she or a relative signs a contract for an assisted living facility.

This article will discuss the findings of a preliminary study of assisted living facility contracts from a consumer's perspective. We hope it will lead to a dialogue among advocates and professionals in the aging field on how best to protect the rights of elderly residents in assisted living facilities.

Study Findings

The contracts studied were from California, Florida, Maryland, Pennsylvania, Texas, and Virginia. We based our examination on the following categories taken from the Commission’s previous analysis of Continuing Care Retirement Community (CCRC) contracts: (1) identification of provider, (2) licensure, (3) listing and explanation of fees, (4) specification of services, (5) short- and long-term absentee policies (e.g. bed hold policies for short term hospital transfer), (6) resident protections (e.g. Bill of Rights, Resident Council policies), (7) transfer and discharge, (8) termination of contracts, (9) unit specifications, and (10) quality care provisions (e.g. staff training requirements and/or areas within the con-

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tract which would encourage resident autonomy, and dignity.

The Contracts — An Overview

These contracts varied widely in presentation and clarity; few provided the consumer with adequate information. Some were written in easy-to-understand lay terms with detailed explanations; some presented the text in a visually easy-to-read format. Of the thirteen contracts reviewed, only one addressed all of the priority areas listed above. On average, most failed to address at least two of the areas.

Often it was difficult to adequately evaluate a contract since many of the forms and lists of facility rules which were to be attached to the contracts were missing. While it is unclear whether the absence of these items was intentional, it is clear that the prospective resident has no way of understanding his/her rights and the responsibilities of residency if these are not available for examination. Other concerns emanated from the following areas:

Contract Language. Language is often an obstacle to a consumer’s understanding of what is offered in an assisted living facility. Many contracts were replete with “legalese,” often hard to understand, and devoid of sufficient, detailed, information. Language concerning the availability and frequency of services was particularly problematic. For example, services were to be provided “...by Owner in the manner which it seems appropriate,” “as needed,” or for “assistance in securing necessary health care.” No mention was made of any right to appeal decisions made by the owner, or of who decides when the services are “needed,” or of what constitutes “necessary health care.” One contract stated that the provider agrees “To transport Resident to/from scheduled physician’s appointments for treatment of conditions existing and diagnosed at time of admission.” What about conditions which develop post-admission? And, if the facility should need to reduce costs associated with service, could it do so by deeming the service “unnecessary at this time” or not “necessary health care.”

Format. Some contracts were poorly organized, and the format was confusing. Only seven contracts referenced information on available services in a single section. Some contained sentences which exceeded one hundred and ninety words — definitely hard to follow! In other contracts, headings and subheadings were used, separating sections; thus, making it easier to read. One contract, over twenty pages in length, actually included a table of contents.

Services. Some facilities provided extensive lists of the exact services available. On the other hand, two contracts made no mention of services other than laundry, meals, and limited transportation. In general, the services listed within the contract focused on activities of daily living (ADLs). Only eight of the thirteen contracts indicated that they provided programs of social or recreational activities, and only three mentioned services directed at the emotional support and well-being of the resident.

The Unit. While the emphasis in assisted living facilities is providing care in a residential setting, residents’ rooms/units were mentioned only rarely in the contracts. Issues raised in this area could include decorating, furnishings, structural modifications, and the effect of changes in household composition (marriage, death of a partner, etc.) Generally, residents of more expensive facilities have their own kitchen, bath, living area, and bedroom; whereas in facilities providing care to people with low-to-moderate income, the residents often share a room and common kitchen. In virtually all facilities, residents are allowed to personalize their unit to create a more “homelike” environment. Of all the contracts examined, just one addressed all of the issues listed above.

Transfer and Discharge. The transfer and discharge policies stated in the contracts varied considerably. In total, there were twenty-four reasons mentioned for transfer and/or discharge of the resident from the facility. Frequently cited reasons were that the resident (1) required a higher level of care, (2) could no longer meet state admission requirements, (3) was unable to pay, and (4) engaged in behavior which is harmful to self or others. Several contracts mentioned transfer and discharge policies without indicating who made the decision, or on what basis the decision was made.

While many of the grounds cited for transfer and/or discharge appear reasonable in theory, approximately one-third of the contracts specified that the decision would be made by the physician and/or administrator. Of these only one contract noted that the resident had a right to appeal or what the appeal
of time. Contracts should stipulate how long the facility will hold the resident’s room, and if the resident must continue to pay for basic services during such absences.

Resident Protections. The contract should include residents’ protections such as recommendations that the resident receive outside consultation prior to signing the contract; that a Resident Bill of Rights be incorporated within the contract, and that a medium exists through which the resident may voice concerns (e.g. Resident Council, or resident placement on Board of Directors meetings). Of utmost importance is the right of a resident to appeal decisions made by the facility on issues such as services, living arrangements or discharge.

Transfer and Discharge. The criteria for transferring or discharging a resident may depend on state regulations, if applicable, and/or facility policies. Perhaps the decision could be made by a multi-disciplinary team (e.g. doctor/nurse, administrator, resident, and family member). Certainly the resident should have the opportunity to appeal the decision. (Note: In the event of involuntary transfer or discharge, federal or state anti-discrimination laws or even state landlord-tenant laws may provide additional protections for the resident). While facilities may actually engage in these practices, only one of the contracts reviewed mentioned it.

At a minimum, a 30-day written notice should be given prior to termination of the contract, along with the justification for such termination. While many contracts did specify at least 30-days notice, one contract stipulated only 5 days. By providing ample notification, arrangements can be made to find an alternate facility or form of care. Due to the many issues associated with transferring a resident to a new facility (e.g. financial planning, care plans, appropriate levels of care, resident-environment fit, etc.), 60-days notice of termination would be more reasonable for non-emergency termination of contract.

State Regulation of Contracts

In some states regulations may govern unit accommodations or resident occupancy levels; some states even regulate the services facilities can provide, along with providing eligibility criteria for admission and continued residence. There is no federal regulation of assisted living, just as there is no federal regulation of board and care homes. Thus, with no agreed-upon model for assisted living in most states and no federal regulations or guidelines, states vary dramatically on what they permit. Currently states are doing one of three things — (1) not regulating assisted living at all; (2) using one of its existing licensure categories to regulate assisted living (licensing assisted living as a board and care home, rest home, adult home, or a residential care facility.); or (3) creating a new licensure type and new regulations specifically for assisted living. (While this is a growing trend, very few states have thus far adopted special new rules for assisted living.)

Even if states have developed a definition and regulations for assisted living, they address residents’ rights, occupancy codes, staff training requirements, contract provisions and unit requirements differently, if at all.

Conclusion

Although assisted living has great potential for those who can afford to pay, it is important for consumers to know as much as possible about a prospective facility before signing a contract. Our preliminary analysis reveals that many assisted living contracts are vague and confusing, and rarely provide enough information about a facility to enable a consumer to make an intelligent, informed choice. Visit the facility at different times of day, talk to staff and residents, and scrutinize the contract carefully. Take the following precautions:

- consult a lawyer who is familiar with assisted living facilities, who can review the contract and facility regulations, who is able to determine if the contract provisions ensure that the consumer’s best interests are protected.
- contact the Long-Term Care Ombudsman, the State Unit on Aging (SUAs), the state Department of Aging or the local Area Agency on Aging (AAAs), for information on a particular facility, on how assisted living is regulated within your state, and on how to obtain a copy of regulations.

If state regulations exist, and apply to the facility in question, they may provide more information than the contracts with regard to service availability, transfer/discharge decisions, unit specifications, responsibilities of the facility, and staff training ratios.

- take time when reviewing the contract — if there are statements which need clarification, ask the facility administrator to explain what is meant in simple language.
- become familiar with all the facility rules and attachments referenced in the contract before signing. As previously discussed, a number of contracts mentioned attachments or outside facility rules which were not included with the contract. These rules may be just a binding as the contract.

Because definitions are vague, and state statutes and regulations are so inconsistent, advocates and aging professionals are encouraged to educate and inform consumers of their rights, caution them to be alert, and recommend that they consult with a counselor or a lawyer before signing a contract.

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