

Topic Group Recommendations Adopted by Two-Thirds Majority of the ALW Resident Rights

Purpose

The Resident Rights Topic Group focused on issues pertaining to disclosure, marketing practices, and the rights of residents.

Issues

The recommendations from this topic group centered on open disclosure of information about various ALR services and fees to residents and prospective residents, consistency of marketing information, discharge policies, appeals systems, contracts and resident rights.

Participants

The topic group was co-chaired by Donna Lenhoff of the National Citizens' Coalition for Nursing Home Reform and David Kylo representing the National Center for Assisted Living.

Topic group participants included Sharon Bridger, National Committee To Preserve Social Security and Medicare; Eric Carlson, National Senior Citizens Law Center; Stephanie Edelstein, American Bar Association Commission on Law and Aging; Marsha Greenfield, American Association of Homes and Services for the Aging; Dan Haimowitz, American Medical Directors Association; Karen Kauffman, National Conference of Gerontological Nurse Practitioners; Cherry Meier, National Hospice and Palliative Care Organization; Mark Miller, National Association of State Units on Aging; Doug Pace, American Association of Homes and Services for the Aging; Mary Parker, Institute for Palliative and Hospice Training, Inc.; Bonnie Ruechel, National Association of Activity Professionals; Ed Sheehy, Assisted Living Federation of America; Beth Singley, Assisted Living Federation of America; Erica Wood, Consumer Consortium on Assisted Living.

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R.01 Consistency in Contracts and Marketing

Recommendation

All information conveyed by an assisted living residence (ALR) to prospective residents (e.g. marketing materials, sales presentations, and tours) should be consistent with the contract.

Implementation

Guideline for State Regulation

Rationale

This recommendation is the foundation for an ethical assisted living marketing program and emphasizes the importance of consistency and accuracy of all oral and written communications.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, Assisted Living Federation of America, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Association for Regulatory Administration, National Hospice and Palliative Care Organization, National Association of Local Long Term Care Ombudsmen, National Adult Family Care Organization, National Network of Career Nursing Assistants, National Senior Citizens Law Center, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.01

1) We support the recommendation. The assisted living marketing professional is charged with educating the public about assisted living, but even more importantly, plays a critical role in helping families decide if the assisted living option is the correct choice for them. What is involved in "full disclosure?" Disclosure is not just what is written in a legally binding contract, it's also about what's said in sales conversations and marketing materials. It's about constantly keeping people informed. It's about understanding that families in crisis may remember only a fraction of what they are told, so "disclosure" is an ongoing process. Disclosure has to be part of the ALR's culture.

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During the sales and marketing process, dialog with the potential resident and their family must include information that falls into two key areas: explanation of assisted living and critical information regarding fees, services, and policies that impact on the resident.

Full disclosure is, itself, a process that occurs through ongoing communication and education and culminates the signing of the resident agreement. Approached sensitively, full disclosure is a win-win for the consumer and the ALR:

1. Full disclosure builds a foundation of trust between the consumers and the provider.
2. Full disclosure builds credibility.
3. Full disclosure ensures that customers know what to expect and receive the services they want..
4. Greater customer satisfaction results from giving consumers realistic expectations and then meeting them.

American Assited Living Nurses Association, Assisted Living Federation of America, Consumer Consortium on Assisted Living, National Association for Home Care, National Center for Assisted Living, Joint Commission on Accreditation of Health Care Organizations

Resident Rights

R.02 Contracts and Agreements: Consistency with Applicable Law

Recommendation

All contract provisions shall be consistent with applicable law. The parties may agree to modify the contract as long as all parties agree to the modification and signify their agreement. Such modification will be consistent with applicable law.

Implementation

Guideline for State Regulation

Rationale

Contracts or similar agreements are the legal documents that disclose the obligations of the resident and ALR to each other. Recommendation R-02 recognizes that each resident is individual and may have a particular want, need or circumstance that would require modifying a standard contract or agreement. It also recognizes that both the ALR and resident shall agree to any modifications.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, Assisted Living Federation of America, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Association for Regulatory Administration, National Committee to Preserve Social Security and Medicare, National Association of Local Long Term Care Ombudsmen, National Hospice and Palliative Care Organization, National Adult Family Care Organization, National Network of Career Nursing Assistants, National Senior Citizens Law Center, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.02

1) We dissent. The general thrust of this recommendation is that all contract provisions must be consistent with applicable law. As such, this recommendation provides no guidance to states or ALRs that will help to improve quality in assisted living.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

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R.03 Contracts and Agreements: Readability and Pre-Signing Review

Recommendation

Contracts shall be written in simple language and be understandable. Prior to signature, the prospective resident has the right to review a contract and/or have the contract reviewed by a third party. Prior to the execution of the contract, a representative of the ALR shall offer to read and explain the contract and answer any questions.

Implementation

Guideline for State Regulation

Rationale

None listed

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, Assisted Living Federation of America, American Medical Directors Association, American Seniors Housing Association, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Activity Professionals, National Association of Local Long Term Care Ombudsmen, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Network of Career Nursing Assistants, National Senior Citizens Law Center, National Adult Family Care Organization, National Multiple Sclerosis Society, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.03

None Submitted

Resident Rights

R.04 Contracts and Agreements: Required Elements

Recommendation

Contracts/agreements should include at a minimum the following information:

- a) the term of the contract;
- b) a comprehensive description of the ALR's billing and payment policies and procedures;
- c) a comprehensive description of services provided for a basic fee;
- d) a comprehensive description of and the fee schedule for services provided on an a la carte basis or as part of a tiered pricing system that are not included in a basic fee;
- e) the policy for changing the amount of fees;
- f) how much advance notice the ALR will give before changing the amount of fees (e.g., 30 days, 60 days). Notices should be readable and understandable by the resident;
- g) whether the ALR requires an entrance fee, security deposit, and/or other fee(s) at entry; the amount of those fees and/or deposits and the policies for whether or not fees and deposits are refundable and procedures for refunding those fees and/or deposits;
- h) a description of the circumstances under which residents may receive a refund of any prepaid amount such as monthly rent;
- i) a description of the ALR's policy during a resident's temporary absence;
- j) the process for initial and subsequent assessments and the development of the service plan based on these assessments, including notification that the resident has the right to participate in the development of the service plan;
- k) a description of all requirements for assessments or physical examinations, including the frequency and assignment of financial responsibility for such assessments and/or examinations;
- l) an explanation of the use of third party services (including all health services), how they may be arranged, accessed and monitored (whether by the resident, family or the ALR), whether transportation is available if the services are not provided on-site, any restrictions on third party services, and who is financially responsible for the third party services and transportation costs;
- m) a description of all circumstances and conditions under which the ALR may require the resident to be involuntarily transferred, discharged or evicted, an explanation of the resident's right to notice, the process by which a resident may appeal of the ALR's decision and a description of the relocation assistance (if available) offered by the ALR;
- n) a description of the ALR's process for resolving complaints or disputes, including any appeal rights, and a list of the appropriate consumer/regulatory agencies (if applicable; e.g. appropriate state/local long-term care ombudsman program, the state regulatory agency, the local legal services program, and other advocacy bodies/agencies);
- o) a description of the procedures the resident or ALR shall follow to terminate the agreement; and,
- p) a list of residents rights as detailed in the statute or regulations governing assisted living residences is incorporated by reference and attached.

Implementation

Guideline for State Regulation

Rationale

Resident Rights

Recommendation R-04 contains a detailed list of elements to be included in contracts. The topic group recognizes the high level of detail in Recommendation R-04 but believes such detail is necessary because of the importance of contracts and similar agreements to the provider and the resident. This list contains key contract provisions generally disclosed by most assisted living providers today. In addition, the topic group believes it is essential to include such detail in this recommendation to address past concerns raised by the General Accounting Office and Congress with regard to contracting and disclosure practices in assisted living.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, Assisted Living Federation of America, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Association of Local Long Term Care Ombudsmen, National Hospice and Palliative Care Organization, National Association for Regulatory Administration, National Adult Family Care Organization, National Network of Career Nursing Assistants, National Senior Citizens Law Center, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.04

None Submitted

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R.05 Contracts and Agreements: Prohibition on Waiver of Right to Sue

Recommendation

The contract should not require the resident to waive the right to sue the ALR under applicable law. The contract may disclose but not require options for alternative dispute resolution available to the resident or ALR.

Implementation

Guideline for State Regulation

Rationale

Recommendation R-05 is a common provision often used in other contracts and agreements

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Association of Local Long Term Care Ombudsmen, National Association for Regulatory Administration, National Adult Family Care Organization, National Hospice and Palliative Care Organization, National Senior Citizens Law Center, National Network of Career Nursing Assistants, Pioneer Network

Organizations Opposing This Recommendation

Assisted Living Federation of America, Joint Commission on Accreditation of Health Care Organizations

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.05

1) We dissent. Recommendation attempts to preempt state law by stating that contracts may not stipulate a provision for alternative dispute resolution.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

Resident Rights

R.06 Posting Contact Information

Recommendation

Current contact information for the appropriate state/local long-term care ombudsman program, the state regulatory agency, the local legal services program, and other advocacy bodies/agencies mandated by the state should be posted in a size and format that is easily read and placed in a conspicuous public location in the ALR and provided to residents upon request.

Implementation

Guideline for State Regulation

Rationale

While the same contact information is listed under recommendation R-04-n dealing with contracts, Topic Group participants believe that this information also should be made readily available to residents and their families by being posted in the residence and provided to the resident upon request.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, Assisted Living Federation of America, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Association of Local Long Term Care Ombudsmen, National Citizens' Coalition on Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Adult Family Care Organization, National Association for Regulatory Administration, National Network of Career Nursing Assistants, National Senior Citizens Law Center, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.06

None Submitted

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R.07 Pre-Admission Disclosure for Specialized Programs of Care

Recommendation

ALRs representing in any way that they provide special care programs for persons with Alzheimer's disease or other dementias, or any other specific health conditions, shall disclose how the program and its services are different from the basic services. At a minimum, the ALR shall disclose the following information to each prospective resident prior to admission:

- The ALR's philosophy of the special care program.
- The process and criteria for placement in, and transfer or discharge from, any specialized unit and/or the ALR.
- The process for assessing residents and establishing individualized service plans.
- Additional services provided and the costs of those services relevant to the special care program.
- Specialized (condition-specific) staff training and continuing education practices relevant to the special care program.
- How the physical environment and design features are appropriate to support the functioning and safety of residents with the specific condition(s).
- The frequency and types of activities offered to residents.
- Options for family involvement and the availability of family support programs.

Implementation

Guideline for State Regulation

Rationale

The most common forms of special care programs found in ALRs/units today are those designed for individuals with Alzheimer's disease and other dementias. On a much smaller scale, some ALRs have been developed to care for individuals with other diseases such as diabetes. This specialization and diversification of assisted living is expected to continue. Such special care programs hold themselves out to be different – something beyond traditional assisted living programs. As such, special attention should be given by the ALR to clearly communicate how the special care program is designed differently from traditional assisted living and how the resident benefits from these differences. In addition, the ALR should disclose any costs or additional fees it charges as part of the specialized program.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Catholic Health Association of the United States, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Adult Family Care Organization, National Hospice and Palliative Care

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Organization, Pioneer Network

Organizations Opposing This Recommendation

Association of Health Facility Survey Agencies, Center for Medicare Advocacy, National Association of Local Long Term Care Ombudsmen, National Association for Regulatory Administration, National Citizens' Coalition for Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Association of State Ombudsman Programs, National Senior Citizens Law Center

Organizations Abstaining From the Vote on This Recommendation

Assisted Living Federation of America, National Network of Career Nursing Assistants

Supplemental Positions for R.07

1) We dissent because disclosure alone is insufficient. Quality-of-care standards are also necessary, but the majority recommendations include no meaningful quality-of-care standards for dementia care.

This recommendation requires assisted living residences that offer special care or programs for residents with Alzheimer's Disease or other dementias to disclose certain information about those programs and services. While disclosure has great merit as a consumer education tool, disclosure must be accompanied by enforceable standards for the services being disclosed, to ensure that residents needing those services are protected.

In proposing R-07, the topic group anticipated that enforceable standards for specialized services or programs, including dementia care, would be included elsewhere in the report. The majority's recommendation on Dementia Care Services (D-11) as adopted includes no such enforceable standards. D-11 does little more than require an assisted living residence to establish policies regarding certain aspects of care, which renders R-07 inadequate.

Association of Health Facility Survey Agencies, Center for Medicare Advocacy, National Association for Regulatory Administration, National Association of Local Long Term Care Ombudsmen, National Association of State Ombudsman Programs, National Citizens' Coalition for Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Network of Career Nursing Assistants, National Senior Citizens Law Center

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R.08 Contracts and Agreements: Third Party Responsibility

Recommendation

The contract shall disclose clearly that a signature by a third party (such as a “responsible party”) does not indicate acceptance of any personal financial responsibility for fees, costs or charges incurred by the resident, and does not make the third party a guarantor, unless the third party has signed a separate agreement indicating such.

The separate agreement shall include, at a minimum, the following information:

1. Third party voluntarily agrees to be financially liable for paying the residents’ expenses as agreed.
2. Third party has the right to have this agreement reviewed by an attorney or other person.
3. Third party has the right to revoke the separate agreement with 30 days notice.

Implementation

Guideline for State Regulation

Rationale

Contracts are legally binding agreements between the resident and the ALR. Frequently family members or others with close relationships to the residents may want to help residents pay for ALR expenses. Third party payers may or may not be legal surrogates. These third parties taking financial responsibility shall clearly understand that they are financially obligating themselves to pay for ALR expenses. To avoid confusion, such agreements should be handled separately from the contract with the resident.

Sometimes, residents move into an ALR quickly and under difficult circumstances (such as a quick discharge following a short hospital stay). Regardless, third parties accepting financial obligations should have the ability to have their attorneys or others review the agreements and adequate time to weigh their decisions. However, ALRs and third party payers should make every effort to sign the separate agreements well in advance of move in so that the 48-hour “cooling off” has expired to minimize the potential for unnecessary emotional trauma to individuals on the cusp of moving into the ALR.

Organizations Supporting This Recommendation

AARP, Alzheimer’s Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consultant Dieticians on Healthcare Facilities, Consumer Consortium on Assisted Living, NCB Development Corporation, National Adult Family Care Organization, National Academy of Elder Law Attorneys, National Association of Social Workers, National Association of Activity Professionals, National Association of Local Long Term Care Ombudsmen, National Association of Professional Geriatric Care Managers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens’ Coalition on Nursing Home Reform, National Conference of Gerontological Nurse Practitioners, National Committee to Preserve Social Security and Medicare, National Association for Regulatory Administration, National Hospice and Palliative

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Care Organization, National Network of Career Nursing Assistants, National Adult Family Care Organization, National Senior Citizens Law Center, National Multiple Sclerosis Society, Pioneer Network

Organizations Opposing This Recommendation

American Seniors Housing Association, Assisted Living Federation of America

Organizations Abstaining From the Vote on This Recommendation

National Association of Home Care, Joint Commission on Accreditation of Health Care Organizations

Supplemental Positions for R.08

1) We dissent. Recommendation attempts to preempt state law by requiring contracts to have specifically worded provisions regarding third party payors. Beyond the mandate of the ALW.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

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R.09 Pre-Admission Disclosure on Advance Directives

Recommendation

ALRs shall provide residents* with information about their rights under state law to make decisions about medical care, including their right to accept or refuse health-related services, the right to formulate advance medical directives, such as a living will, a directive to physicians or durable power of attorney for health care.

The ALR information should disclose its philosophy and policies about implementation of advance medical directives, including, but not limited to, implementation of Do Not Resuscitate order (DNRs) and medical directives that require limitations on delivery of medical services, food, or hydration, and situations in which the ALR is required to summon emergency medical services.

Implementation

Guideline for State Regulation

Rationale

The goal of this recommendation is to ensure that prospective residents* can make informed decisions about whether the ALR will meet their needs and follow their care directives. It is important for the resident* and ALR to openly discuss and understand each other's position. The laws surrounding advance medical directives vary from state to state, and who has the authority to honor these directives also may vary. It is not the intent of this recommendation to address these differences but to stress the importance of full disclosure and understanding between a prospective resident* and the ALR about the implementation of this important resident right to health care decision making.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Assisted Living Federation of America, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consultant Dietitians on Healthcare Facilities, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, NCB Development Corporation, National Academy of Elder Law Attorneys, National Adult Family Care Organization, National Association of Social Workers, National Association of Activity Professionals, National Association of Home Care, National Association of Local Long Term Care Ombudsmen, National Association of Professional Geriatric Care Managers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Association for Regulatory Administration, National Conference of Gerontological Nurse Practitioners, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Network of Career Nursing Assistants, National Senior Citizens Law Center, National Multiple Sclerosis Society, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

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None

Supplemental Positions for R.09

1) We dissent. Redundant with recommendation dealing with advance directives in conjunction with the pre-move in screening and initial assessment.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

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R.10 Pre-Admission Disclosure on End-of-Life Care

Recommendation

ALRs shall clearly disclose information to residents* about applicable state laws and about the ALR's philosophy and policies regarding delivery of end-of-life care, including delivery of hospice and palliative care services. Disclosure shall include the circumstances, if any, under which a resident with terminal illness or in the process of dying may be required to leave.

Implementation

Guideline for State Regulation

Rationale

The goal of this recommendation is for full disclosure and a clear understanding of the roles, rights and responsibilities of a prospective resident and of the ALR with regard to end-of-life care needs. This recommendation recognizes the ALR's as a residence for people who may have chronic illness and frail health, and who may expect that as a resident in this supportive living environment they will be able to come to the end of their lives in peace and comfort.

In some states, there may be laws or regulations that affect the provision of end-of-life care within an ALR and these laws vary from state to state. It is not the intent of this recommendation to address these differences in law, but to stress the importance of disclosure and common understanding between a prospective resident* and the ALR about the implementation of this important resident right to exercise choice about end-of-life care, including dying in chosen surroundings with peace and in comfort.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Assisted Living Federation of America, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, Center for Medicare Advocacy, Consultant Dietitians on Healthcare Facilities, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, NCB Development Corporation, National Academy of Elder Law Attorneys, National Adult Family Care Organization, National Association of Social Workers, National Association of Activity Professionals, National Association of Home Care, National Association of Local Long Term Care Ombudsmen, National Association of Professional Geriatric Care Managers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Conference of Gerontological Nurse Practitioners, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Association for Regulatory Administration, National Network of Career Nursing Assistants, National Senior Citizens Law Center, National Multiple Sclerosis Society, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

Resident Rights

None

Supplemental Positions for R.10

None Submitted

Resident Rights

R.11 Resident Rights and Provider Responsibilities

Recommendation

Within the boundaries set by law, residents have the right to:

- Be shown consideration and respect;
- Be treated with dignity;
- Exercise autonomy;
- Exercise civil and religious rights and liberties;
- Be free from chemical and physical restraints;
- Be free from physical, mental, fiduciary, sexual and verbal abuse, and neglect;
- Have free reciprocal communication with and access to the long term care ombudsmen program;
- Voice concerns and complaints to the ALR orally and in writing without reprisal;
- Review and obtain copies of their own records that the ALR maintains;
- Receive and send mail promptly and unopened;
- Private unrestricted communication with others;
- Privacy for phone calls and right to access a phone;
- Privacy for couples and for visitors;
- Privacy in treatment and caring for personal needs;
- Manage their own financial affairs;
- Confidentiality concerning financial, medical and personal affairs;
- Guide the development and implementation of their service plans;
- Participate in and appeal the discharge (move-out) planning process;
- Involve family members in making decisions about services;
- Arrange for third party services at their own expense*;
- Accept or refuse services;
- Choose their own physicians, dentists, pharmacists and other health professionals;
- Choose to execute advance directives;
- Exercise choice about end of life care;
- Participate or refuse to participate in social, spiritual or community activities;
- Arise and retire at times of their own choosing;
- Form and participate in resident councils;
- Furnish their own rooms and use and retain personal clothing and possessions;
- Right to exercise choice and lifestyle as long as it does not interfere with other residents' rights;
- Unrestricted contact with visitors and others as long as that does not infringe on other residents' rights; and,
- Come and go and rights that one would enjoy in their own home.

In addition, residents' family members have the right to form and participate in family councils.

In the context of resident rights, providers have a responsibility to:

- Promote an environment of civility, good manners and mutual consideration by requiring staff, and encouraging residents, to speak to one another in a respectful manner;
- Provide all services for the resident or the resident's family that have been contracted for

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by the resident and the provider as well as those services that are required by law;

- Obtain accurate information from residents* that is sufficient to make an informed decision regarding admission and the services to be provided;
- Maintain an environment free of illegal weapons and illegal drugs;
- Obtain notification from residents of any third party services they are receiving and to establish reasonable policies and procedures related to third party services;
- Report information regarding resident welfare to state agencies or other authorities as required by law;
- Establish reasonable house rules in coordination with the resident council.
- Involve staff and other providers in the development of resident service plans; and,
- Maintain an environment that is free from physical, mental, fiduciary, sexual and verbal abuse and neglect.

*An ALR may require that providers of third party services ensure that they and their employees have passed criminal background checks, are free from communicable diseases and are qualified to perform the duties they are hired to perform.

Implementation

Guideline for State Regulation

Rationale

These resident rights support resident dignity, privacy and choice and are essential to the mission of assisted living and cornerstones of quality in an ALR. For assisted living to promote individualized care and quality of life, residents shall be treated with respect and their legal rights, individuality and autonomy shall be recognized.

The rights described recognize the importance of a resident's right to make decisions that affect his or her quality of life in assisted living within the boundaries set by law. To avoid duplication, the list includes a general category of civil and religious rights and liberties (e.g., constitutional rights and rights under the Americans with Disabilities Act and the Fair Housing Amendments Act) but does not include issues addressed in other recommendations, e.g., copy of the contract, review of inspection and survey reports, procedural protections upon discharge from the facility. The list of resident rights will be included in the contract as recommended in R.4.

It is also recognized that providers have responsibilities that support their ability to deliver quality services to assisted living residents in a safe, homelike environment. The responsibilities strike a necessary balance between an individual's ability to exercise his or her rights and the ALR's responsibility to establish reasonable rules and guidelines that will ensure the dignity, privacy, comfort and well-being of all residents.

The provider responsibilities (which were originally contained in R.12) contained in this recommendation are intended to establish a framework within which providers and residents may work together to maintain a quality living environment. They are not intended to discourage residents from exercising legal rights or lifestyle choices. However, they do acknowledge the responsibility of the provider to enforce rules commonly recognized as necessary in any group living environment. (For example, the ALR should

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establish and enforce rules prohibiting the playing of loud music at 2 a.m. when most residents are asleep.)

A list of provider responsibilities should be given to the resident when the ALR gives the resident a copy of the list of resident rights that accompanies the contract.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, National Network of Career Nursing Assistants, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of Social Workers, National Association of State Ombudsman Programs, National Association of Local Long Term Care Ombudsmen, National Center for Assisted Living, National Citizens' Coalition for Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Adult Family Care Organization, National Senior Citizens Law Center, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

Assisted Living Federation of America

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.11

1) We dissent. We support the intent of this recommendation, however this recommendation attempts to hold the ALR accountable to a capricious standard for promoting "good manners".

American College of Health Care Administrators, Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

Resident Rights

R.12 Ethics Committee/Consultation

Recommendation

An ALR should have knowledge of how to access an ethics committee or a source of ethics consultation to: (1) advise in development of policies and procedures; (2) educate staff, families, residents and its own members on ethical issues; and (3) provide a forum for cas consultation on ethical issues concerning resident care and services.

Implementation

Guideline for Operations

Rationale

Ethics committees or consultation teams offer a forum for thorough and thoughtful examination of difficult ethical concerns, in accordance with pre-established procedures. Ethical questions can arise in dealing with residents and families as care needs change with illness or the aging process. Ethical questions might involve choices about major medical treatment, end of life treatment, or matters of “everyday ethics” that surface from residents living in close proximity with others. Questions might be triggered when the physician seeks guidance on treatment choices, or when there is a difference of interests perspectives between the ALR and the physician, physician and family/resident, family and resident, or resident and resident. There may be questions in which the resident’s decision-making capacity or identification of a surrogate is at issue; in which the safety and best interests of the resident shall be weighed against resident autonomy; or in which individual choice may conflict with the common good.

The committee or consultation team should be objective and sufficiently independent from the ALR. It should be multidisciplinary in composition, and should include long-term or acute care staff (including direct care staff), families, residents/patients, and community representatives, e.g., from religious, medical, legal and consumer advocacy organizations. The ALR may use the services of an ethics committee or consultation team in a hospital, nursing home or other nearby health care organization – or may develop its own committee or consultation team that maintains independence and objectivity from the ALR. The committee or consultation team is an advisory body, not a decision making body, and accordingly cannot limit the decision making rights of the resident or the ALR.

Organizations Supporting This Recommendation

AARP, Alzheimer’s Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, National Network of Career Nursing Assistants, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens’ Coalition for Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Association of Local

Resident Rights

Long Term Care Ombudsmen, National Hospice and Palliative Care Organization, National Adult Family Care Organization, National Senior Citizens Law Center, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

Assisted Living Federation of America

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.12

1) We dissent. A focus of the Ethics Committee is to be on the development of policies and procedures. This recommendation, like many others does not, as the Senate Committee asked, define “what quality assisted living should look like.” Rather, it is devoted to prescribing, in detail, the processes that a state should require of its assisted living residences (ALRs), not the quality goals that the good ALR should strive to achieve.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

Resident Rights

R.13 Room/Unit Hold During Resident Absence

Recommendation

The resident has the right to leave the unit temporarily as long as fees are paid.

Implementation

Guideline for State Regulation

Rationale

The purpose of this recommendation is to ensure the resident's right to hold his/her unit long as fees are paid.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Assisted Living Federation of America, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, National Network of Career Nursing Assistants, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition for Nursing Home Reform, National Association of Local Long Term Care Ombudsmen, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Adult Family Care Organization, National Senior Citizens Law Center, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.13

None Submitted

Resident Rights

R.14 Acceptance of Public Funds: ALR Policy and Information for Residents

Recommendation

The contract/agreement shall include the ALR's policies concerning acceptance of public benefits and continued residency by a resident whose private funds have been exhausted.

When a resident* informs an ALR that personal funds will become exhausted, the ALR shall inform or refer the resident to sources of information about Medicaid and other benefits before initiating discharge procedures.

Implementation

Guideline for State Regulation

Rationale

The goal of this recommendation is to ensure that residents* understand prior to move-in whether the ALR participates in any public or other financing programs that would help pay their expenses should they "spend down" and no longer be able to pay for their care and services. When residents can no longer pay privately, the ALR should inform or refer residents to sources that can help residents with their options under public programs such as Medicaid.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Assisted Living Federation of America, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, National Network of Career Nursing Assistants, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition for Nursing Home Reform, National Association of Local Long Term Care Ombudsmen, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Adult Family Care Organization, National Senior Citizens Law Center, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.14

Resident Rights

None Submitted

Resident Rights

R.15 Fee Increases, Security Deposits and Resident Finances

Recommendation

Fee Increases

The ALR shall give residents a minimum of 30 days notice in writing before changing the amount of the basic fees or other fee schedules as set forth in the contract. This 30-day requirement does not apply to a fee increase specified in the contractual fee schedule, an triggered by a change in the resident's service plan.

Security Deposits

The ALR shall hold security deposits in an interest bearing account and shall return any deposits plus accrued interest as set forth in the contract or as required by state law, minus allowable deductions for unpaid fees or damage to the unit within 30 days of the date the resident leaves the ALR.

Resident Finances

The operator or staff of an ALR shall not serve as a resident's guardian, attorney-in-fact, representative payee. The ALR may manage the resident's funds only with a written authorization by the resident, witnessed by a person with no affiliation to the ALR management. The ALR has a fiduciary responsibility to the resident in any management of a resident's money.

Implementation

Guideline for State Regulation

Rationale

These three recommendations are designed to ensure residents' funds and deposits are protected and that residents receive adequate notice of fee increases so that they have adequate time to evaluate how or whether the changes will affect their lives and finances

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, National Network of Career Nursing Assistants, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of Social Workers, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition for Nursing Home Reform, National Association of Local Long Term Care Ombudsmen, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Adult Family Care Organization, National Senior Citizens Law Center, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

Resident Rights

American Seniors Housing Association, Assisted Living Federation of America

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.15

1) We dissent. Fee increases – redundant with recommendation on terms and conditions of the resident contract. Security Deposits- redundant, says ALR must comply with existing requirements in state law.

American College of Health Care Administrators, Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

2) We agree with this recommendation with the exception of the language stating that the operator/staff serve as the representative payee. Operators/staff do serve this role when residents are beneficiaries in certain government programs. Therefore, we believe the “Resident Finances” section should read:

Resident Finances: The operator or staff of an ALR shall not serve as a resident's guardian or attorney-in-fact. The ALR may act as representative payee for Social Security or SSI payments, but must have written authorization, approval from the Social Security Administration, and annually file accounting reports with the Social Security Administration. The ALR may manage the resident's funds only with a written authorization by the resident, witnessed by a person with no affiliation to the ALR management. The ALR has a fiduciary responsibility to the resident in any management of a resident's money.

American College of Health Care Administrators, National Center for Assisted Living, American Seniors Housing Association, American Association of Homes and Services for the Aging

Resident Rights

R.16 Resident Rights Upon Transfer or Discharge

Recommendation

Transfer or Discharge

An ALR intending to transfer or discharge a resident involuntarily in a non-emergency situation shall provide written notice of such intent to the resident* at least 30 days prior to transfer or discharge. The notice shall include:

- Effective date of the transfer or discharge.
- Reason(s) for transfer or discharge, including facts and circumstances on which the decision is based.
- Resident's right to appeal the decision.
- Information on where to appeal and timeframe for filing appeal.
- Contact information for the Long Term Care Ombudsman Program.
- Resident's right to represent himself/herself or to be represented by legal counsel, a relative, friend or other spokesperson.

This notice shall be provided in a format that is readable and in language that the resident* can understand.

Emergency Transfer or Discharge

In case of emergency (as defined by Recommendation D-5), no written notice is required prior to the transfer or discharge; however the ALR shall provide verbal notice to family members or other individuals designated by the resident, and such notice should be given as soon as is practical under the circumstances.

Appeal of Transfer or Discharge

Residents* have the right to appeal an involuntary transfer or discharge decision to the state licensing or other appropriate agency as determined by the state. States shall designate an agency or agencies for hearing such appeals, and shall develop processes that are expeditious, impartial, and staffed by qualified personnel. These processes shall provide for an in-person hearing accessible to the resident. The resident and the ALR shall have the right to present evidence and arguments and to refute evidence and arguments presented by other parties. Residents may also appeal the decision to the ALR in accordance with internal procedures developed by the ALR. Residents shall not be required to exhaust internal procedures before appealing the ALR decision to the state.

In states without appeals systems it is recommended that ALRs create an appeal process that utilizes neutral outside mediation. (This recommendation should not be construed as supporting or requiring mandatory arbitration.)

Implementation

Guideline for State Regulation

Rationale

Recommendations D.4 and D.5 address the reasons why ALRs may seek to transfer or discharge residents (D.4) and the internal protocols for implementing such a decision (D.5). Recognizing seriousness of such decisions and its impact on residents, this

Resident Rights

Recommendation supplements D.4 and D.5 by providing residents with procedural rights and protections.

Many ALRs have internal mechanisms for reviewing transfer or discharge decisions but because they are conducted by ALR staff or administrators, these reviews may not be as objective as if they were performed by a third party. A number of states have implemented external systems and identified an agency, frequently the licensing agency, to hear appeals of ALR discharge decisions.

R.16 requires ALRs to provide residents* with adequate notice of a decision to transfer or discharge the resident, reasons for the decision, and the opportunity to appeal it. It also provides ALR residents with a right they would have as residents of traditional rental housing or nursing homes - the right to appeal to an impartial forum, a decision that affects one of the most important areas of their lives.

The recommendation does not remove the authority of ALRs to establish their own review mechanisms, but it does allow residents to appeal to the external forum without waiting for the ALR to make a final decision. Understanding the need for all parties to have time and effective decisionmaking in this area, the recommendation calls for external processes that are expeditious, objective, and staffed by qualified personnel.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Association of Homes and Services for the Aging, American Assisted Living Nurses Association, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, National Network of Career Nursing Assistants, Catholic Health Association of the United States, Center for Medicare Advocacy, Consultant Dietitians on Healthcare Facilities, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Social Workers, National Academy of Elder Law Attorneys, National Association of Local Long Term Care Ombudsmen, National Association for Regulatory Administration, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition on Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Senior Citizens Law Center, National Association of Professional Geriatric Care Managers, National Adult Family Care Organization, National Conference of Gerontological Nurse Practitioners, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

Assisted Living Federation of America

Supplemental Positions for R.16

Resident Rights

1) We dissent. The general thrust of this recommendation is that an ALR must comply with existing state laws regarding transfer and discharge. Also holds state governments accountable for designating certain agencies for hearing appeals and ensuring that the agency is staffed. Beyond the mandate to the ALW. Infringes on state authority to decide how it will meet the intent of an appropriate recommendation.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

Resident Rights

R.17 Access to State Survey/Inspection Reports

Recommendation

The ALR shall at all times have readily available copies of all inspection reports and plan of corrections from the past 12 months or, if they have not had a survey in 12 months, the most recent survey cycle. The ALR shall post notice of the availability of such report in a visible, public location and provide copies upon request to prospective and current residents.

Implementation

Guideline for State Regulation

Rationale

Such reports are public documents and residents*, their families and prospective residents can use to provide a recent history of a state's review of the ALR's performance.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Assisted Living Federation of America, Association of Health Facility Survey Agencies, Catholic Health Association of the United States, National Network of Career Nursing Assistants, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, Joint Commission on Accreditation of Health Care Organizations, National Multiple Sclerosis Society, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of Social Workers, National Association of Local Long Term Care Ombudsmen, National Association of State Ombudsman Programs, National Center for Assisted Living, National Citizens' Coalition for Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Adult Family Care Organization, National Hospice and Palliative Care Organization, National Senior Citizens Law Center, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

None

Organizations Abstaining From the Vote on This Recommendation

None

Supplemental Positions for R.17

None Submitted

Resident Rights

R.18 Disclosure of Staffing Levels

Recommendation

The ALR shall disclose the minimum number of direct-care staff available on each shift.

Implementation

Guideline for State Regulation

Rationale

While a rough guide, minimum staffing levels may be helpful in selecting an ALR.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Association of Health Facility Survey Agencies, National Network of Career Nursing Assistants, Center for Medicare Advocacy, Consumer Consortium on Assisted Living, National Multiple Sclerosis Society, NCB Development Corporation, National Academy of Elder Law Attorneys, National Association of Social Workers, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association for Regulatory Administration, National Association of State Ombudsman Programs, National Citizens' Coalition on Nursing Home Reform, National Association of Local Long Term Care Ombudsmen, National Adult Family Care Organization, National Committee to Preserve Social Security and Medicare, National Hospice and Palliative Care Organization, National Senior Citizens Law Center, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

American Assisted Living Nurses Association, American Association of Homes and Services for the Aging, Assisted Living Federation of America, Catholic Health Association of the United States, Joint Commission on Accreditation of Health Care Organizations, National Center for Assisted Living

Organizations Abstaining From the Vote on This Recommendation

American College of Health Care Administrators

Supplemental Positions for R.18

- 1) We believe the following revised recommendation better meets consumer information needs.

The ALR shall disclose upon request the number of staff available each day.

While a rough guide, disclosing staffing patterns may be helpful to consumers when selecting an ALR. Several different staff positions contribute to the quality of life of residents, not just direct-care staff (as defined by the ALW). For instance, activities staff can significantly contribute to the well being of residents. For some residents, these types of services go further to meet resident needs than services traditionally delivered by direct care staff. In addition, it is worth noting that resident ADL and health needs vary from facility to facility making it difficult for consumers to determine whether the minimum number of direct care staff is adequate in a particular ALR. Finally, it is important to recognize that not all ALRs staff in the traditional day, evening and night shifts.

American Association of Homes and Services for the Aging, Catholic Health

Resident Rights

Association of the United States, National Center for Assisted Living, American Assited Living Nurses Association, American Seniors Housing Association

2) We dissent. The number of direct care staff on each shift can vary from day to day according to resident needs. Unclear as to how and in what manner this disclosure would be expected to be made and in what context it would be presented to describe the care planning and service need assumptions that go into staffing schedules.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations

Topic Group Recommendations That Did Not Reach Two-Thirds Majority

Resident Rights

The following recommendations did not reach a two-thirds majority of the ALW. The recommendations showing a voting record were unable to reach two-thirds majority at the final vote. The recommendations that do not have a voting record were unable to reach two-thirds majority during the development process.

Resident Rights

R.19 Lost and Stolen Property

2/3 Maj. Not Reached

Recommendation

An ALR shall take reasonable efforts to safeguard the property of residents. If an ALR believes that a resident's property has been stolen, the ALR should contact local police. An ALR shall reimburse residents for lost or stolen property if the ALR has failed to make a reasonable effort to safeguard that property.

Implementation

Guideline for State Regulation

Rationale

The intent of this recommendation is not to make ALR's responsible for every loss of resident property. Rather it is to encourage ALRs to take whatever steps are reasonable under the circumstances to help residents ensure the safety of their possessions.

Organizations Supporting This Recommendation

No Vote Recorded

Organizations Opposing This Recommendation

Organizations Abstaining From the Vote on This Recommendation

Supplemental Positions for R.19

1) We support this failed recommendation because it sets a standard of care that assisted living providers must follow in safeguarding resident property, and places responsibility for resulting loss on a provider who fails to meet that standard.

The recommendation recognizes that by caring for residents who need oversight and assistance as a result of physical or mental incapacities, assisted living providers assume responsibility for helping those residents to safeguard their possessions. When providers fail to exercise reasonable care, and resident property is lost or stolen as a result, providers should be liable for that loss.

Proposed substitute recommendation: An assisted living residence shall exercise reasonable care in safeguarding the personal property of residents. If the residents' property is lost or stolen as a result of the assisted living residence's failure to exercise reasonable care, the facility shall reimburse residents for the value of the property. An assisted living residence operator who believes that a resident's property has been stolen should contact, or facilitate the resident's* efforts to contact, appropriate law enforcement agencies.

Implementation: Guideline for state regulation

Rationale: This recommendation recognizes the obligation of assisted living residences to exercise reasonable care in helping residents who are living in their facilities because they need oversight and assistance as a result of physical or mental incapacities, to safeguard their possessions.

*Association of Health Facility Survey Agencies, Center for Medicare Advocacy,
National Association for Regulatory Administration, National Association of Local*

Resident Rights

Long Term Care Ombudsmen, National Association of State Ombudsman Programs, National Citizens' Coalition for Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Network of Career Nursing Assistants, National Senior Citizens Law Center

2) Loss and theft of personal property does occasionally happen in ALRs. A recommendation is needed to address this possibility. The undersigned support the following language: An ALR shall take reasonable efforts to safeguard the personal property of residents. If an ALR believes that a resident's property has been stolen, the ALR shall contact local police. An ALR shall disclose and provide information in its resident contract that the ALR can not guarantee the safekeeping of personal property. Residents will need to make decisions about what personal property (including jewelry) to bring.

AARP, Consumer Consortium on Assisted Living, National Association of Professional Geriatric Care Managers, NCB Development Corporation, National Center for Assisted Living, National Multiple Sclerosis Society, Paralyzed Veterans of America, Pioneer Network

3) We agree that ALRs should take reasonable efforts to safeguard the property of residents. However, how "reasonable efforts" would be defined was unclear. Because of this, there is strong likelihood of abuse of such a facility policy by some. Further, this recommendation would have held ALRs to a higher level of liability for lost or stolen items than in other settings or businesses in this country.

National Center for Assisted Living, American Seniors Housing Association, American Association for Homes and Services for the Aging

Resident Rights

R.20 Medicaid Reimbursement

2/3 Maj. Not Reached

Recommendation

An ALR that has agreed to participate in the Medicaid program should make every effort to accept Medicaid reimbursement for any current resident for whom Medicaid reimbursement is available.

Implementation

Guideline for Operations

Rationale

By definition, a Medicaid-eligible resident has spent down virtually all of his/her savings and has relatively little income. To prevent residents from having to move, Medicaid-certified providers are encouraged to accept Medicaid reimbursement on behalf of Medicaid-eligible individuals.

Organizations Supporting This Recommendation

AARP, Alzheimer's Association, American Assisted Living Nurses Association, American College of Health Care Administrators, American Medical Directors Association, American Seniors Housing Association, American Society of Consultant Pharmacists, Catholic Health Association of the United States, Consumer Consortium on Assisted Living, National Multiple Sclerosis Society, NCB Development Corporation, National Association of Activity Professionals, National Association of Professional Geriatric Care Managers, National Association of Social Workers, National Center for Assisted Living, National Hospice and Palliative Care Organization, Paralyzed Veterans of America, Pioneer Network

Organizations Opposing This Recommendation

American Association of Homes and Services for the Aging, Assisted Living Federation of America, Association of Health Facility Survey Agencies, National Network of Career Nursing Assistants, Center for Medicare Advocacy, National Academy of Elder Law Attorneys, National Association for Regulatory Administration, National Association of State Ombudsman Programs, National Association of Local Long Term Care Ombudsmen, National Citizens' Coalition on Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Senior Citizens Law Center

Organizations Abstaining From the Vote on This Recommendation

Joint Commission on Accreditation of Health Care Organizations

Supplemental Positions for R.20

1) We oppose this failed recommendation because it requires nothing and, in any case, it has been made merely a non-binding guideline for operations (as opposed to a guideline for state regulation).

This recommendation is a radically watered-down version of the language approved by the Resident Rights Topic Group. As the recommendation now stands, assisted living providers are merely encouraged to retain residents for whom Medicaid reimbursement becomes available, as guideline for operations. There is no requirement that they do so. The original language, a guideline for state regulation, stated: "An ALR that participates in the Medicaid program shall be required to accept

Resident Rights

reimbursement for any current resident for whom Medicaid reimbursement has become available during his/her stay in the facility.” This was a reasonable requirement: if an assisted living residence has chosen to be certified for Medicaid reimbursement, and Medicaid reimbursement for a resident is available, the assisted living residence should be required to accept that reimbursement. This is particularly important because, by definition, the resident in question likely has become financially eligible for Medicaid by paying much of his or her life savings to the assisted living residence as payment for care received.

Federal law prohibits Medicaid-certified long-term care providers from discriminating on the basis of payment source. 42 U.S.C. §§ 1395i-3(c)(4), 1396r(c)(4)(A), 42 C.F.R. § 483.12(A)(2)(v). There is no principled reason to make an exception for assisted living. It is unconscionable to allow an assisted living residence to discharge an individual who becomes eligible for Medicaid after impoverishing herself by paying for her care in the residence.

Association of Health Facility Survey Agencies, Center for Medicare Advocacy, National Association for Regulatory Administration, National Association of Local Long Term Care Ombudsmen, National Association of State Ombudsman Programs, National Citizens' Coalition for Nursing Home Reform, National Committee to Preserve Social Security and Medicare, National Senior Citizens Law Center

2) We dissent. Goes beyond the mandate to the ALW to stipulate the degree to which an ALR must go to accept Medicaid reimbursement.

Assisted Living Federation of America, National Association for Home Care, Joint Commission on Accreditation of Health Care Organizations