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ALW Report Regarded As A 'Valuable First Step'

The Assisted Living Workgroup's (ALW) long-awaited report on guidelines to ensure quality in assisted living nationwide received generally favorable reviews at the April 29 hearing of the U.S. Senate Special Committee on Aging, where the report was termed by committee Chairman Sen. Larry Craig (R-Idaho) as a "valuable first step, but only a beginning."

The ALW, convened at the request of the committee in August 2001, developed 131 recommendations addressing eight areas of assisted living. Nearly 50 organizations were involved in the 18-month effort.

Craig recognized the time and work put in by the ALW participants in developing the recommendations. "We appreciate that each recommendation was put through a thoughtful, thorough process with the welcoming of divergent views," he said.

Craig also noted, however, that more needs to be done. "This report does not present a uniform set of model rules and regulations for the rendering of health care services in the assisted living context," he said. Craig also raised concerns that "facilities in some states are exemplary in providing appropriate, quality care for their residents while in other states such facilities are clearly handling more than they are capable of doing."

Sen. John Breaux (D-La.), ranking member of the committee, lauded the ALW report and process, hailing it as a model for future policy development. The assisted living community has "certainly answered the charge we gave them—and answered it with more detail and insight than any of us had hoped," he said. "The depth and substance of the report are clear markers of its value, not just to state policy-makers but to the consumers and families." Breaux went on to praise the National Center for Assisted Living (NCAL) for its role in the ALW. "I also want to thank the National Center for Assisted Living for providing the

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HHS Targets Questionable Contractual Joint Ventures

The U.S. Health and Human Services Office of Inspector General (OIG) continues to aggressively pursue its antifraud mission. Most recently, OIG issued a special advisory bulletin about "contractual joint ventures," which include a wide range of contractual arrangements for providing health care services that could potentially violate the antkickback statute.

The bulletin cautions health care providers participating in Medicare and Medicaid programs against entering into joint ventures that reward providers for improper patient referrals.

For example, if a health care provider expands into a related line of business but neither operates the new business nor contributes substantial financial, capital, or human resources to the venture, the provider may be in violation of the antikickback statute, the bulletin says.

While some arrangements are eligible for "safe harbor" provisions under the antikickback statute, parties that attempt to carve potentially problematic arrangements into separate contracts to qualify for protection may be subject to prosecution. In particular, OIG gives an example of a supplier making discounts available to a provider as a means of sharing profits.

To help identify suspect contractual ventures, the OIG bulletin describes characteristics that, taken separately or together, could indicate a prohibited agreement. These include arrangements where a newly created business predominantly or exclusively serves the provider's existing patient base, whose referrals the supplier would have been a competitor for.

The bulletin is available online at oig.hhs.gov/fraud/docs/alertsandbulletins/042303SABJointVentures.pdf.

Inside Focus

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resources to develop the final report."

As many ALW participants agreed, the final report represents a good-faith effort by participants. "This is not a perfect document, but it does provide numerous guidelines for public policy-makers, assisted living stakeholders, and others," said Jan Thayer, chair of NCAL. "That ALW participants raised issues, had their voices heard, and came together on many issues was invaluable."

The ALW Report: 'A Valuable Tool'

The 381-page report, "Assuring Quality in Assisted Living: Guidelines for Federal and State Policy, State Regulation, and Operations," outlines 110 recommendations and the rationale behind each in eight areas, including an assisted living definition and core principles, accountability and oversight, affordability, direct care services, medication management, operations, resident rights, and staffing. Each of the recommendations was supported by at least two-thirds of ALW participants. The report also includes the text of 21 recommendations that failed to gain support from two-thirds of ALW participants.

The ALW began its work in August 2001, when the Senate committee asked assisted living stakeholders to come together to develop recommendations to ensure high-quality care and services for all assisted living residents. The stakeholders—about 50 organizations representing assisted living providers; consumers; regulators; and various aging, health care, and psychosocial interests—formed the ALW. Each recommendation was developed by one of the eight topic groups and went through a four-stage approval process. For a recommendation to be considered as "supported by the ALW," it had to receive a supporting vote from at least two-thirds of ALW participants.

Among the recommendations, the report calls for continued regulation of assisted living at the state level, more programs to make assisted living affordable to more Americans, and the establishment of a national Center for Excellence in Assisted Living (CEAL), a public-private entity that would regularly reassess and update standards for assisted living, provide technical assistance to states, begin development of outcome measures, and report on the profession.

Witnesses Offer Varied Perspectives

At the hearing, the senators heard testimony from Stephen McConnell, the Alzheimer's Association's vice president for public policy and advocacy; Dan Madsen, president of Bellevue, Wash.-based Leisure Care and a member of the American Seniors Housing Association (ASHA); and Bob Mollica of the National Academy for State Health Policy in Portland, Maine. The Alzheimer's Association and ASHA were both active participants in the ALW. Many ALW participants, including NCAL, submitted written testimony for the hearing record.

McConnell said the ALW has "helped move the debate forward and will contribute to improvements." He noted that as many as 60 percent of residents in assisted living have some form of dementia, making this issue a high priority for his association. McConnell was pleased with those ALW recommendations affecting residents with Alzheimer's disease; they will be used by his association to effect change at the local level. He called on Congress for two actions: federal housing programs to make assisted living more affordable to low- and middle-income Americans and funding for CEAL to conduct research on care and outcome measures and research on pursuing opportunities through Medicaid.

Madsen noted that the "spirited debate and interaction between such a diverse group of people...will lead to more communication, better policy, and, in turn, improved quality." Madsen noted that states have provided meaningful oversight of assisted living and ought to continue to do so. As next steps for the committee, Madsen suggested an examination of the cost of financing long term care services, as well as further work at the state level with participants similar to those in the national ALW. NCAL raised similar issues in its written testimony.

Mollica, the only witness representing an organization not involved with the ALW, lauded the committee's action and noted that the inclusion of both passed and failed recommendations is of great value to readers and policy-makers. Mollica suggested the next steps should be to develop a set of "model regulations" based on the recommendations; research the impact of different regulatory approaches; and develop a consortium of researchers, states, and the federal government to carry out the CEAL objectives.

After the testimony, the senators questioned the witnesses on several issues, including care of residents with dementia, licensing providers for specific levels of care, the definition of assisted living, the value of resident councils, and the next steps for the ALW and its report.

Breaux asked the witnesses for their assessment of states' licensing of assisted living facilities by level of care. Mollica noted that consumers prefer a general approach to the level-of-care issue, which allows them more flexibility in staying in a facility. However, he added that regulators must monitor residents' level of care to ensure that appropriate staffing and care are available to all residents.

On the value of resident councils, Craig thought they contributed to "the process of balance and quality of care." Madsen agreed, noting also that Leisure Care facilities regularly survey families and residents and make changes based on feedback. "We raise the bar because it's the right thing to do," said Madsen.

In a discussion of the definition of assisted living, Craig questioned witnesses about why the ALW was unable to reach consensus. McConnell explained that the ALW participants' divergent perspectives made consensus difficult. One point of debate was a requirement for single-occupancy units, which many participants thought would hinder affordability. Two-thirds of ALW participants, however, did support a definition calling assisted living "a state-regulated and -monitored residential long term care option" and that outlined services and discussed resident assessments, service plans, and contracts.

What's Next?

Committee members expressed concern that the report would now "collect dust on a shelf" and said they expect to hear about progress in less than two years. All three witnesses agreed this was just the beginning of a process to ensure consistent quality in assisted living.

"There is genuine interest in this issue at the state level," said McConnell, who added that congressional awareness of the process would help maintain momentum. Breaux promised continued federal attention, seeing a legitimate national interest in how facilities are operated as Medicaid pays for more assisted living services and federal tax credits expand for long term care insurance.

NCAL's Thayer noted, however, that state innovation in assisted living policy should not be pushed aside for the sake of the ALW report. "We don't want to lose innovative approaches that states may use simply because it doesn't match the ALW report," said the NCAL chair.

Craig suggested that the committee might produce a white paper to accompany the report before it is sent out to states. He gave no indication as to what the white paper might say. Committee staff told NCAL that they would consult ALW participants as they refine the next steps for the ALW and the dissemination of its report.

ALW Participants See Report, Hearing Differently

"It was clear to me that from the senators' perspectives this was the beginning of the process and not the end. The committee expects to hear back from the ALW on further progress at the state level," said Thayer.

After the hearing, Thayer had a one-on-one conversation with Sen. Craig and reiterated that NCAL will support its state affiliates, which plan to conduct local meetings to review the ALW report.

Not all ALW participants saw the report as a positive step for the profession.

Both the National Citizens' Coalition for Nursing Home Reform and the National Association of Health Facility Survey Agencies (NAHFSA), among others, thought the report did not go far enough in its detail of regulations for assisted living facilities.

Rick Harris, NAHFSA's president and a regulator in Alabama, told National Public Radio that the recommendations were "tepid." An ALW participant, Harris dissented on many of the recommendations. "We're going to be looking at this industry for years to come. There are not, in most states, a strong set of regulations to make sure that people are being adequately cared for," he said.

More Information on the Hearing and the ALW Report

The hearing is available for viewing on the committee's Web site, www.aging.senate.gov.

Background information on the ALW, a downloadable version of the ALW report, Thayer's testimony, and more are posted on the Member's Only section of the NCAL Web site at www.ncal.org.

A bound copy of the ALW report can be purchased on the ALW Web site at www.alworkgroup.org or by calling (800) 508-9422. The cost is $24, plus shipping and handling.

President Gives States $20 Billion In Fiscal Relief, LTC Insurance Bill Introduced In The House

On May 28, President Bush signed into law the third-largest tax cut in American history, which also included $20 billion for state fiscal relief. A key provision in the Jobs and Growth Tax Relief Reconciliation Act of 2003 calls for $10 billion to be distributed to states through an increase in the Federal Medical Assistance Percentage (FMAP) for Medicaid funds and $10 billion for states to use for essential services. The legislation passed the Senate by a vote of 51 to 50 and passed the House of Representatives by a vote of 231 to 200.

This provision will increase Medicaid funds for all states beginning in July and extending through September 2004. Despite repeated attempts to remove the FMAP provision, Sens. Susan Collins (R-Maine), Ben Nelson (D-Neb.), John Rockefeller (D-W.Va.), and Gordon Smith (R-Ore.) worked diligently to keep it in the final legislation.

"With state budget conditions the worst our nation has experienced since World War II, the economic stimulus plan passed by Congress will help ease the growing pressure to cut Medicaid funding, which is a vital lifeline to our nation's most vulnerable seniors and persons with disabilities," said Charles Roadman II, MD, CNA, president and chief executive officer of the National Center for Assisted Living (NCAL) and the American Health Care Association (AHCA).

In the U.S. House of Representatives, Reps. Nancy Johnson (R-Conn.) and Earl Pomeroy (D-N.D.) introduced the Retirement Security Act of 2003 (HR 2096). Among its provisions, the bill creates an "above-the-line" deduction of "qualified" long term care (LTC) insurance premium costs to encourage the purchase of LTC insurance, incentives for employers to offer LTC insurance polices in employer cafeteria plans and flexible spending accounts, and additional consumer protections for long term care insurance.

Both NCAL and AHCA support federal incentives to help Americans save for retirement. "We believe the tax incentives, consumer protections, and other provisions offered in this legislation will not only make long term care insurance more attractive and affordable, but will empower individuals to choose whether their care needs can best be met at home, in a community-based or assisted living setting, or in a nursing facility," Roadman said.

First-Quarter Earnings Reports

Sunrise Assisted Living

McLean, Va.-based Sunrise Assisted Living reported a 23 percent increase in its first-quarter 2003 revenue to $136.7 million, from $111.1 million in the same quarter of 2002. Net income for the first quarter of 2003 rose 79 percent, to $13.4 million, or $0.56 per diluted share, compared with $7.5 million, or $0.32 per diluted share, for the first quarter of 2002 (which included $4.1 million, or $0.10 per share, of expenses associated with the redemption of Sunrise's 5.5 percent convertible notes). First-quarter 2003 earnings per share results were 75 percent higher than first-quarter 2002.

The company's one-term manage sale/manage-back program raised first-quarter 2003 income by reducing debt—and associated interest expenses—by $46 million and lowering depreciation and amortization expenses of both completed and pending property sales. First-quarter 2003 results also reflect continued growth in the company's operating portfolio, including a 20 percent revenue increase from management contracts. The dramatic increase in net income was achieved despite a $3.7 million increase in general and administrative expenses due in part to Sunrise's growth strategy, such as its expansion into new markets in Europe, and expenses associated with the acquisition of Marriott Senior Living.

Advocat

Advocat, based in Franklin, Tenn., reported that its net loss of $3.1 million, or $0.57 per share, for the first quarter of 2003 remained unchanged from that reported for the same period in 2002. Net revenue for the first quarter of 2003 decreased 7.4 percent, to $47.8 million, compared with $51.6 million in the same period of 2002. The decrease in revenue was primarily due to previously announced lease terminations and a facility sale during the fourth quarter of 2002.

Capital Senior Living Corp.

Dallas-based Capital Senior Living reported a net income for the first quarter of 2003 of $1.2 million, or diluted earnings per share of $0.06, compared with first-quarter 2002 earnings of $1.8 million. First-quarter 2003 revenue was $14.5 million, compared with revenue of $16.6 million for the same period in 2002. The primary factor in the lower revenue was the contribution of four senior living communities to a joint venture in the second quarter of 2002.

On March 31, Capital Senior Living announced its intent to purchase the remaining interest in Triad Entities, which owns 12 communities with resident capacity of 1,670 and a resident mix of 95 percent independent living and 5 percent assisted living. These 12 communities produced revenue of $13 million in 2002 entirely from private-pay sources. The company expects to complete the transaction in the third quarter of 2003.

Emeritus Assisted Living

Emeritus Assisted Living, based in Seattle, Wash., reported a net loss of $2.3 million for the first quarter of 2003. This compares with a net loss of $3.3 million reported for the first quarter of 2002.

Total revenue for the first quarter increased $11 million to $47.2 million, with the majority of the increase coming revenue brought in from 24 communities acquired in October 2002.

Assisted Living Concepts

For the first quarter of 2003, Assisted Living Concepts, based in Dallas, reported operating income after net expenses to be $901,000, compared to with loss of $957,000 for the same period in 2002. Revenue for the first quarter of 2003 rose 11 percent to $41.1 million, compared with $37 million for the same period of 2002. All figures are based on the company's 177 residences, not including two sold in March 2003.

Missouri-Based Company Acquires Leisure Living

In March, St. Louis, Mo.-based Quality of Life Health Corp. (QLHC) acquired Leisure Living, which owned 14 assisted living facilities with more than 800 residents. The properties bring a net operating income is $4 million and more than $60 million of assets to QLHC.

According to QLHC Chief Financial Officer David Todt, this is the company's first step in its growth strategy. QLHC expects to refinance Leisure Living's debt, reducing existing interest costs and raising equity for future acquisitions. QLHC President Larry Stockman, MD, said the company's new direction includes strategic acquisitions of companies in the health care industry that provide unique, value-added services and products that improve the overall quality of life and well-being for its clients and customers.

NALW Logo Now Available Online

Have you started thinking about your 2003 National Assisted Living Week (NALW) celebration? To jump-start the creative juices for the Sept. 7 to 13 celebratory week, here's a peek at this year's logo. Although printed in this newsletter in blues and greens, the actual design features vibrant red, yellow, black, and white. The design, which reflects the *Sharing Life's Treasures* theme announced in March by the National Center for Assisted Living (NCAL), is available online at www.ncal.org/nalw2003/nalwlogo2003.htm.

NCAL established NALW in 1995. It offers assisted living residences across the nation the opportunity to celebrate the exceptional involvement of those who foster a truly caring spirit, including families, residents, staff, volunteers, and the community. NCAL will be mailing a planning guide and product catalog to all members this summer. The theme presents many opportunities for staff, residents, and families to reflect on a proud history and influence future generations.

Income Among the Elderly

According to the U.S. Administration on Aging, the median income of those 65 years of age and older in 2001 was $19,688 for males, $11,313 for females, and $14,152 for all older people.

Real median income of older people (after adjusting for inflation) fell by 2.6 percent from 2000 to 2001. For all older persons reporting income in 2001 (32.9 million), 31.8 percent reported less than $10,000.

Only 31.2 percent reported income of $25,000 or more.

Households containing families headed by persons aged 65 or older reported a median income in 2001 of $33,938 ($34,661 for Caucasians, $26,610 for African-Americans, and $24,287 for Hispanics). About one of every nine (10.7 percent) family households with an elderly household member had an annual income of less than $15,000, and 48.1 percent had an annual income of $35,000 or more.

ASHA Releases Liability Insurance Study

For assisted living beds, the average cost of general and professional (G&P) liability insurance has risen 190 percent since 2001, according to a recently published report by the American Seniors Housing Association (ASHA).

ASHA's report covers the liability insurance experiences of its members. In all, survey respondents own and/or manage more than 212,000 units of seniors housing. Assisted living units account for 29 percent of units surveyed.

According to the report, a combination of factors—including the events of Sept. 11, 2001, the crisis in corporate governance, and the decline of investment income in the property and casualty insurance industry—have hardened the commercial insurance marketplace. This has led to "seemingly endless increases in general and professional liability costs, coverage restrictions, and great difficulty in procuring any coverage in certain states like Florida and Texas," the report says.

The report notes that while insurance problems will continue, the data suggest that for those providers willing to accept higher levels of risk, higher deductibles, and higher retentions, "the rewards can be significant." The new focus, the report says, must be on risk-management principles and techniques.

The report categorizes statistics by respondents for profit or not-for-profit status and gives the mean and median for cost of claims, G&P liability limits and deductibles, and total premium paid. To order a copy of the report, which costs $100, call (202) 237-0900.

NCAL Publishes State Regulatory Summary

Ever wonder how your state regulations compare to those in other states? A new free resource helps answer that question: "Assisted Living State Regulatory Review 2003."

Just published by the National Center for Assisted Living, this review offers a summary of assisted living regulation for each state and the District of Columbia. The topics covered include state regulatory agency information, licensure term, definition, facility scope of care, staff training, requirements for specialty units, and more.

To obtain a copy of the report, visit www.ncal.org to download the file, call (202) 898-6320, or send an e-mail to lbentley@ahca.org to have a copy mailed to you. Please include your name, address, and phone number.

Programs and services offered at two Eliza Jennings Senior Care Network's assisted living facilities were the first assisted living facilities to receive accreditation in Ohio from CARF-CCAC. **Devon Oaks** and **Jennings Place** received a three-year accreditation after undergoing a rigorous peer-review process, on-site visit, and program review. The CARF-CCAC report noted that "a high level of commitment and caring is found throughout the organizations, from the upper management to the direct care staff members."

Horizon Bay in Tampa, Fla., has named **Karen McFarlin** as its 2002 Executive Director of the Year. McFarlin is the executive director of Balmoral, a 107-unit assisted living community in Palm Harbor, Fla. "While Karen is quick to share credit for success at Balmoral, she is ultimately responsible for the community's satisfied residents, enthusiastic staff, and occupancy rate of nearly 100 percent for the past year," said Steven Benjamin, Horizon Bay's chief operating officer.

Classic Residence by Hyatt has named **William Sciortino** senior vice president of operations at the company's headquarters in Chicago. Sciortino will oversee resident service in 17 communities. Most recently, Sciortino served as chief information officer for Classic Residence by Hyatt.

The board of directors of Health Care Property Investors unanimously elected **James Flaherty III** president and chief executive officer. Flaherty also was reelected to a two-year term on the company's board of directors. Health Care Property Investors is a self-administered equity real estate trust with a portfolio of 453 properties, including 126 retirement and assisted living facilities.

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