

NATIONAL CENTER FOR ASSISTED LIVING

GUIDING
Principles

for Providing Information to Consumers

INTRODUCTION

The National Center for Assisted Living (NCAL) has long been committed to professional and ethical conduct in all advertising, sales, and marketing activities. NCAL developed this *Guiding Principles for Providing Information to Consumers* document to articulate more fully the organization's commitment to ethical marketing practices and full disclosure of information to prospective and current assisted living residents and their families or responsible parties.

About 750,000 people live in assisted living communities across the nation according to the National Center for Health Statistics. Assisted living embraces a philosophy of person-centered care while providing assistance with physical activities and health-related needs. Assisted living communities also strive to meet the social, emotional, cultural, intellectual, and spiritual well-being of residents.

The assisted living profession continues to grow and evolve as does NCAL's perspectives on our changing profession. The concepts and terms used in this document may vary from state to state and time to time and are provided as a framework to help promote a general understanding of consumer information disclosure in the assisted living context. The contents of *Guiding Principles for Providing Information to Consumers* may represent some preferred practices, but do not represent minimum standards, "standards of care," or industry-wide norms for assisted living communities (ALCs).

NCAL's philosophy supports the belief that residents have the right to be fully informed about fees, policies, services, and occupancy and move-out criteria of an ALC. In addition, an ALC's written and verbal marketing communications should be consistent with the ALC's contract or resident agreement and policies, as well as the laws, rules, and regulations governing the ALC's operations. An ALC's written and verbal communications should not differ from the actual services provided or available to a resident. Providers should not engage in any false or misleading advertising and sales practices that are intentionally designed to deceive or manipulate consumers.

During the past 25 years, assisted living has evolved into a multi-faceted profession that provides various services and care. This dynamic growth and variety of services, coupled with the growing diversity of long term care services in our country, make it important for providers to present their prospective customers and current residents with information that is as complete, concise, accurate and candid about their communities and the services provided as possible. The general statements below describe aspects of how providers can disclose important information to their customers.

GUIDING PRINCIPLE #1: CONTRACTS

Service agreements, which can also be called contracts, are the primary tool that providers use to explain the legal responsibilities of both the provider and the resident.

*Assisted Living Community (ALC) is used in this document as a way to encompass the various terms identifying assisted living facilities.

Since contracts, by their very nature, can contain confusing or imprecise terms, NCAL believes the following suggestions can facilitate a consumer's understanding of the ALC's contract document and help during the ALC's process of completing a contract:

- Contract language should be consistent with the ALC's marketing materials and information conveyed to prospective residents, residents' families, or interested parties. Marketing information consists of marketing materials, sales presentations, company web sites, social media, tours, verbal information, or any other materials portraying the community's services and policies.
- Contract provisions, format (e.g., font) and any modifications should be consistent with applicable laws and regulations.
- Modifications can be made to the contract as long as all parties agree, the individuals involved are authorized to act for the party, and each signifies their agreement to modifications in the contract through an amendment to the contract or another written document.
- Contracts should be written in simple language when possible. Providers may offer one of their representatives to read and explain the contract to a prospective resident or third party and answer any questions prior to the execution of the contract.
- Prior to signing the contract, providers should explain to prospective residents their right to review a contract and have the contract reviewed by a third party.
- If a third party signs the contract, the contract should include a representation that the third party is authorized to act on behalf of the resident, and an explanation regarding the third party's potential or actual financial role as being responsible for charges, costs, or fees incurred by the resident.
- Contracts should include the ALC's policies concerning acceptance of public benefits and whether the resident has continued occupancy when private funds have been exhausted. The ALC should inform the resident about or refer the resident to sources of information about Medicaid and other benefits before initiating the move-out procedures. In addition, contracts should explain the resident's responsibility to notify the ALC well before the resident's personal funds expire (e.g., 120 days) so that the ALC can provide timely information to residents and help them make a transition.
- Contracts should discuss rights, options, and limitations concerning the resident's ability to obtain services outside the ALC.

GUIDING PRINCIPLE #2: FINANCES

Disclosing and reviewing a variety of financial topics can help establish an understanding for the prospective or current resident or responsible parties. ALCs should explain their policies regarding fees, deposits, public financing, and management

of resident funds in a clear and concise manner to help consumers better understand how to finance their care and services.

Fee Increases

When an ALC increases the amount of the basic fees or fee schedules, the ALC should give residents, families, or other parties financially responsible for the fees a written notice as required by state law. The notice of fee increases should be issued at least 30 days in advance of the date the fee is set to increase (unless a longer time is required by state law). In addition, the ALC should disclose its policies for modifying fees due to changes in a resident's needs, which may be reflected in the service plan.

Refundable or Non-Refundable Fees

The ALC should disclose its policies on all refundable or non-refundable fees. These policies should also be included in the ALC's contract. In cases of resident death, refundable fees should be refunded, and advance notice requirements regarding moving out should not apply in order to be eligible for refunds.

Management of Resident Finances

In general, it is not recommended that an ALC's operator or employees serve as a resident's guardian, attorney-in-fact, or power of attorney for health care. The provider should check applicable state laws and, when appropriate or required, offer a list of public, non-profit financial service agencies. In those rare instances when a resident may designate the ALC to handle finances, an ALC staff person may manage the resident's funds but only when appropriately designated in accordance with state requirements. After being properly designated, the ALC has a fiduciary responsibility to the resident for management of the resident's money. It is recommended that the ALC have a system of checks and balances for accountability when an ALC staff person is designated to manage a resident's funds.

Public Financing Options

A staff member typically explains the ALC's policies regarding public benefits, such as Medicaid or other publicly-funded programs, prior to a resident signing the contract. ALCs should provide a suggested timeframe for residents to provide advance notice of depletion of funds so that residents can avoid emergency situations with their finances. In instances when a resident informs an ALC that his or her personal funds may be exhausted, the ALC may want to inform the resident or refer the resident to sources of information about Medicaid and other public benefits, including the limited availability of those public resources and the process for accessing those resources. In those instances when the ALC does not participate in a public financing program or such financing is not available, the ALC should explain the move-out process before the resident's private funds have been exhausted.

In addition, many ALCs include these policies and procedures in their contracts. [See **Contracts** section.]

GUIDING PRINCIPLE #3: RESIDENT TRANSFER OR MOVE-OUT

ALCs may be required to transfer or move-out a resident as required by law, regulation, or ALC policy due to a resident's non-emergency medical condition. In non-emergency situations requiring an ALC to either transfer or move out a resident, ALCs should provide written notice of such intent to the resident, family, or responsible party at least 30 days prior to the transfer or move-out or within the timeframe required by state law. Notices should be provided in writing and explained to residents, family members and/or the responsible party.

The notice should include the following items:

- Effective date of the transfer or move-out.
- Reason(s) for transfer or move-out, including facts and circumstances on which the decision is based.
- Resident's right to appeal the decision.
- Information on where to appeal and time frame 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.

Emergency Medical Transfers

In instances of resident medical emergencies, no written notice is required prior to a transfer or move-out; however, a community staff member should provide verbal notice to family members or other individuals designated by the resident. This notice should be given to the individual or family member as soon as is practical under the circumstances. Residents may decide in writing which family members or other designated individuals (if any) may be notified.

Other Emergency Transfers and Evacuations

ALCs should have policies and procedures in place for handling natural disasters and other emergencies, including evacuation plans developed in cooperation with emergency preparedness authorities.

Room/Unit Hold Policies

ALCs should disclose their room or unit hold policies during resident absences and should support the resident's right to hold the unit as long as fees are paid or as long as state law permits. When the resident may not be able to return to the ALC or the ALC has serious doubts about whether the future needs of the resident can be met by the ALC, staff should have a discussion with the resident or family member/designated representative about appropriate care alternatives.

Appeal of Transfer or Move-out

As determined by the state, residents may have a right to appeal an involuntary transfer or move-out decision to the state licensing or other appropriate agency.

An ALC may have developed internal procedures regarding how a resident can appeal a decision and residents can follow those procedures to appeal the decision to the ALC. Residents should not be required to exhaust internal procedures before appealing the ALC's decision to the state.

In states without appeals systems, it is recommended that ALCs create an appeal process that utilizes a third-party, neutral mediator.

GUIDING PRINCIPLE #4: SPECIAL CARE AND END-OF-LIFE

Many ALCs provide specialized care to serve residents with Alzheimer's disease or other illnesses. In addition, the need for end-of-life care can pose special challenges. In either case, it is important for consumers to understand what services will be offered, by whom, and the fees for those services when extra care is needed. The ALC should coordinate services with outside service providers when utilized by residents.

Special Care Provisions

ALCs offering specialized care services for people with Alzheimer's disease, other forms of dementia, or specific health conditions should explain to prospective residents and their families how the ALC's special care program and its services are different from the community's basic services. There may also be state-specific regulations on dementia care. In addition, ALCs should disclose how staff have been trained and prepared to meet the individual needs of residents who require specialized care.

Pre-Admission Disclosure on Advance Directives

ALCs should 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, their right to formulate advance medical directives, such as a living will, and their right to develop a directive to physicians or durable power of attorney for health care.

In addition, ALCs should disclose their philosophy and policies about implementation of advance medical directives, including, but not limited to, implementation of do-not-resuscitate orders and medical directives that require limitations on delivery of medical services, food, or hydration, and situations in which the community is required to summon emergency medical services. This helps to ensure that both the resident and ALC agree on how to proceed.

Pre-Admission Disclosure on End-of-Life Care

Increasingly, end-of-life care is being offered in the assisted living setting. ALCs should disclose information to residents about applicable state laws and about the ALC's philosophy and policies regarding delivery of end-of-life care, including delivery of hospice and palliative care services. The ALC disclosure should indicate general circumstances, if any, under which a resident with terminal illness or in the process of dying may be required to leave as well as the resident's right to refuse the ALC's offer to provide end-of-life care.

GUIDING PRINCIPLE #5: PUBLIC POSTING OR NOTICE OF STATE CONTACT AND OTHER INFORMATION

ALCs should post or provide up-to-date contact information for appropriate and related state agencies and offices. The list should include:

- State or local long term care ombudsman's office;
- The state regulatory agency that licenses or certifies ALCs; and
- Other advocacy bodies and organizations or government agencies mandated to be posted or provided.

The contact information document format should be easy to read. When required by state law or an ALC's policies, the contact information should be posted in a public location within the ALC. Many ALCs offer the identical material prepared in a printed format so that residents who request the information can obtain a copy from the ALC for their own personal use. ALCs may also attach the material to the contract.

GUIDING PRINCIPLE #6: OTHER CONSUMER INFORMATION

States typically conduct periodic surveys or inspections of ALCs and provide a report of the state's findings to the ALC. When such a report exists, ALCs should make available to consumers, upon request, the latest survey/inspection report for their review.

The contents of this document may represent some preferred practices, but do not represent minimum standards, "standards of care," or industry-wide norms for ALCs. As always, an ALC is responsible for making clinical decisions and providing care and services that are best for each individual person. In addition, the contents of *Guiding Principles for Providing Information to Consumers* are for general informational purposes only and may not be substituted for legal advice. Seek the advice of knowledgeable counsel when developing your service agreement(s) and other contracts.

As approved by NCAL's Board of Directors on May 13, 2014.