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Now is the Time to Reform Antiquated Assisted Living Regulations

By Wayne L. Kaplan

New York does not have a statutory definition of “assisted living,” but existing licensed models called “adult homes” and “enriched housing programs” and look-a-like, or “assistive living facilities,” currently serve New York’s dependent senior population. Statistics show that the number of senior citizens with physical and/or mental disabilities in New York State is growing.

Facility operators, the NYS Department of Health and the state legislature all want to revamp and reinvent the industry and now is the time to do it. The regulations that all adult care facilities in New York State must follow have not been significantly revised in almost 20 years. They are outdated and no longer reflect the needs and characteristics of the population living in these facilities today.

In many localities, there is an over saturation of assisted living facilities, usually of the high-end variety. For frail elderly or mentally disabled residents of limited means, the choices of available facilities are restricted. Unfortunately, cost becomes the primary factor affecting the choice of facilities, overshadowing such important criteria as the age of the facility, its staffing, training issues and maintenance programs, all of which should affect one’s choices.

For the facilities that either choose to or are forced to serve the lower income senior population, the system is pitiful. More than 12,000 of the 36,000 residents living in New York’s adult homes do not have enough of their own financial resources, and they must rely on Congregate Care Level II Supplemental Security Income (SSI) as their means of support. Reimbursement from SSI to the assisted living facility is only about \$28 a

day and there has been no increase in the state's share of Level II SSI since 1988. Boarding a dog in a kennel costs \$28 a day, and Smokey has to spend most of that time in a cage.

An adult care facility cannot provide the required comprehensive package of support services, which include a room, 3 meals a day, snacks, 24-hour supervision, personal care assistance, assistance with medication management, case management, structured activity services, laundry and housekeeping (never mind services above and beyond the call of duty) for \$28 a day. Think of the additional labor costs, utility costs, and insurance costs (assuming that the operator can even get insurance) -- just to name a few. The lack of adequate public funding results in insufficient services and unnecessary admissions to higher levels of care, needlessly costing the New York State government and us, the taxpayers, millions of dollars a year. In addition, if Medicaid were more available to pay for the care component cost of assisted living as it does in many other states, the need for placement in higher, more costly levels of care would be delayed or prevented.

The government assistance system has not kept up with the times. Now is the time to reform it. New legislation must allow the industry to accommodate New York's rich and poor seniors, the frail elderly, and residents with mental disabilities. New York's system should consist of specific but progressive laws and regulations that are outcome-oriented for each type of service being offered. The public reimbursement for facilities that cater to seniors with lower incomes should be fair and allow an operator to provide the necessary services while still earning a reasonable profit. Otherwise, what incentive does an operator have to serve these seniors, who clearly deserve to have access to affordable assisted living services?

Medicaid programs for assisted living services should be expanded and funding should be increased. There should also be reasonable regulations that specifically address the needs of those with dementia, cognitive impairments, and physical and mental disabilities. In addition, the regulations should allow facilities to provide services that will allow their residents to safely age in place while maintaining their dignity. And finally, the regulations should statutorily define "assisted living" and should govern all facilities providing this type of housing and services, no matter what the facility calls itself.

If the regulatory and reimbursement systems are fairly and reasonably updated, New York's older and dependent populations will be better served.

[Wayne L. Kaplan](#) is a Partner and Chair of the Seniors' Housing Group at Ruskin Moscou Faltischek, P.C. He is a Member of the Board of Directors (Emeritus) & Chair of the Legal Committee - Empire State Association of Adult Homes & Assisted Living Facilities, Albany, N.Y. He can be reached at 516-663-6553 or wkaplan@rmfpc.com.