

A Look at the Regulatory Environment of Assisted Living Communities

A December 13, 2018 article in The New York Times explored some of the key challenges assisted living memory care providers are facing today.

The article was an unflattering assessment of an industry that is growing so fast that assisted living providers and lawmakers alike are overwhelmed; asking very difficult questions about issues including inconsistent care and uneven regulations and citations, especially for incidents involving residents with dementia.

Some observers noted that much of the blame for the inconsistency lies with the state programs intended to oversee providers, and not with the assisted living providers themselves.

Eleven months earlier, a January 2018 Government Accounting Office (GAO) report concluded that “effective state and federal oversight is necessary to ensure that the health and welfare of Medicaid beneficiaries receiving assisted living services are protected, especially given the particular vulnerability of many of these beneficiaries to abuse, neglect, or exploitation.”

For the past several years, experts have been predicting that the assisted living industry may soon see more comprehensive – and some say stricter – regulations.

Current state of regulations

Currently, many entities exist that intend to provide oversight to the assisted living industry.

With well over 15 percent of assisted living residents using state Medicaid programs to pay for their care, the reimbursement is strictly supervised.

About 47 percent of assisted living communities are Medicaid-certified to be home and community-based service (HCBS) providers. Currently, Medicaid pays for some of the cost of assisted living in 44 states, as well as Washington D.C.

Assisted living providers are also subject to state and federal labor and occupational safety laws, as well as state and local food safety rules, for those that provide food service programs.



Additionally, assisted living facilities are subject to certain licensing and certification rules with each state issuing a license to a facility after an annual or semiannual inspection. This process is overseen by a state's department of health, department of social services or a combination of these departments.

According to the National Center for Assisted Living (NCAL), states establish and enforce licensing and certification requirements for assisted living communities, as well as requirements for assisted living administrators or executive directors.

A look back at 2018

Every year, NCAL publishes its authoritative Assisted Living State Regulatory Review. The comprehensive document covers information on topics such as which state agency licenses assisted living programs and summarizes recent legislative and regulatory updates that affects assisted living. It also covers requirements for resident agreements, admission and discharge requirements, units serving people with Alzheimer's or dementia, staffing, and training.

In its 2018 Assisted Living State Regulatory Review, NCAL noted that 29 states reported changes to a variety of assisted living requirements, either to the licensing requirements or to other regulations that also apply to assisted living providers (e.g., nursing scope of practice or life safety).

"This variety indicates that assisted living providers and states are focused on a range of issues and that over time, states are generally strengthening the regulatory requirements for assisted living communities," NCAL noted. "The most common changes were related to staffing, including additional training requirements and expanded or clarified background check requirements."

Other notable changes in 2018, according to NCAL:

- Nine states made changes that affect training or administrator qualifications: Colorado, Florida, Louisiana, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, and Texas.
- Seven states made changes affecting background checks for personnel, staff, or volunteers at assisted living communities: Colorado, Georgia, Kansas, Kentucky, New Hampshire, North Carolina, and Ohio.
- At least five of these states were awarded funds by the Centers for Medicare and Medicaid Services to design comprehensive national background check programs for direct patient access employees.
- A number of states updated requirements regarding residents' rights, definitions or reporting for abuse and neglect, and emergency preparedness
- Meanwhile, many assisted living communities in general benefitted from tax reform legislation in 2017.

New regulations on the horizon?

As the assisted living industry expects to admit higher numbers of chronically ill seniors in the coming years, observers say that the regulatory landscape will no doubt react.

In a March 2018 issue of the Journal of Post-Acute and Long-Term Care Medicine, prominent physicians argued the need to implement new national standards for assisted living. The article came on the heels of the GAO report issue the preceding January.

In August 2018, bipartisan bills were introduced in Congress calling for the Centers for Medicare & Medicaid Services to publish the Program of All-Inclusive Care for the Elderly (PACE) final rule by December 31, 2018. Observers told McKnight's Senior Living the rules would "open new opportunities for PACE enrollees to access care at home, in senior housing, assisted living or in community centers."

LeadingAge, a leading charitable organization focused on education, advocacy, and applied research for the aging community, announced late last year a series of assisted living legislative priorities for 2019. These included ensuring Medicaid eligibility for older adults through home- and community-based waivers and state programs.

Others, meanwhile, say the staffing shortages and turnover afflicting all segments of long-term care may lead to new rules. In many states, wage pressures may force increases in the minimum wage, which could impact the operating margins of many providers.

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