

THE ASSISTED LIVING GUIDE

PLANNING STRATEGIES THAT WORK!

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PLANNING FOR TODAY, PROTECTING FOR TOMORROW

Assisted Living Facility

The idea of Assisted Living is tremendously appealing – an older individual receiving necessary care and services in a home-like environment, while retaining choice and autonomy.

Assisted Living is the fastest growing form of residential housing for older Americans and has filled the space between nursing homes and the residential home. With the assisted facility, many people enter their Assisted Living homes with the expectation that this will be their home for the rest of their lives. Also, they develop friendships and relationships with other residents. Therefore, the facility becomes their primary community.

Most Assisted Living facilities are licensed to care for residents only up to a particular need of care. A generic multi-level system might designate three levels: low, moderate and high (excludes skilled nursing care - nursing home level). When a resident has low care needs, the resident may reside at any type of Assisted Living facility. When the resident's care needs reach the moderate level, the resident is allowed to reside only at a facility licensed for moderate or high care needs. When the care needs increase to the high level, the resident is allowed only to reside in a facility licensed for high care needs. Quality of care standards are set for each level to assure that residents receive care that is adequate to meet their needs.

However, momentum toward Assisted Living, should not lead one to assume that Assisted Living is always the right choice, or that any and all health care conditions can be accommodated within Assisted Living. Some Assisted Living facilities have been known to increase their acceptance and retention of residents with significant health care needs that for which the facility is not equipped. Therefore, there must be a balance between two compelling and sometimes competing goals – allowing residents to "age in place" and assuring that residents receive an adequate and appropriate quality of care.

"Assisted Living" is not defined in any meaningful way by federal law. Currently, the Federal Government plays no significant role in setting Assisted Living facilities standards, guidelines or rules. However, "Assisted Living" has been defined by the State of Maryland as "a residential or facility- based program that provides housing and supportive services, supervision, personalized assistance, health related services, or a combination thereof that meets the needs of the individuals who are unable to perform or who need assistance in performing activities of daily living in a way that promotes optimum dignity and independence for the individuals." But what does this mean?

The definition does little to specify exactly what level of service is required. The specifics are limited. What does optimum dignity mean? Does the definition mean that staffs are awake around the clock? What staffs are awake? What health related services are provided? Does this mean only assistance with the self-administered medication? The definition intimates that extensive health care is available. But, in fact, nothing in the definition guarantees any health care beyond self-administration of medication. Therefore, the definition fails to state clearly what services are made available to residents. Generally,

the Assisted Living provider has full freedom to provide extensive, individualized services, but that same freedom allows less conscientious providers to cut corners and force out residents who are considered undesirable for one reason or another.

Additionally, the Assisted Living definition is written in an idealized, attractive term, which is vague and practically unenforceable. Rather than establishing standards directly, the State anticipates, to a great extent, that standards will be established through negotiations between a facility and an entering resident. However, there is little protection for the residents because, as a practical matter, admission agreements often are not negotiated but presented to incoming residents on a take-it-or-leave-it basis. Additionally, a 1997 Report from the General Accounting Office ("GAO") noted "[assisted living] contracts had no standard format, varied in detail and usefulness, and in some cases were vague and confusing." The GAO subsequently examined agreements in four states, and found one-third of the reviewed agreements contained language that the GAO considered unclear or potentially misleading.

Also, discharge from a Maryland Assisted Living facility is authorized for violation of the admission agreement. Therefore, the Assisted Living facility sets discharge justifications in an admission agreement. The facility may limit discharge to legitimate situations such as endangerment of other residents and nonpayment. Or, on the other hand, the facility may write an admission agreement with unfair discharge justifications; i.e., use of a wheelchair in the dining rooms. Consequently, the facility has extensive discretion to discharge a resident. With the State granting such discretion, we have two potential discharge problems: that a resident will be discharged too soon, or too late. In a too soon discharge, a facility may discharge a resident because their needs have become too expensive or inconvenient, even though the facility, if it wanted, could provide adequate care. The too late discharge, is often the result of a facility retaining a resident for whom the facility is incapable of providing care.

All assisted facilities are not the same, and can vary within the State. Therefore, proper evaluation of the facility and their contracts must be performed, because the obligations and rights pertaining to the Assisted Living facility may not protect your rights, but the facilities. Consequently, unenforceable contract language can be devastating to a resident if the provider is less interested in a resident's health and satisfaction, and thus takes advantage of the vagueness of the contract to provide the bare minimum services.

If you would like further information, please call our office at 301 663 9230.

DISCLAIMER

This Guide is designed to provide general information only.

The materials presented in this handbook are for **INFORMATIONAL PURPOSES ONLY** and are not offered for and do not constitute financial advice, tax planning or legal advice or legal opinion on any specific fact or issue. Additionally, both federal and state law change. Therefore, use this handbook for information only.

ASSISTED LIVING CHECKLIST

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
<u>RESIDENTS</u>			
Dressed and well cared for	<input type="checkbox"/>	<input type="checkbox"/>	
Involved in activities	<input type="checkbox"/>	<input type="checkbox"/>	
Clean-shaven, hair brushed	<input type="checkbox"/>	<input type="checkbox"/>	
Talking amongst themselves	<input type="checkbox"/>	<input type="checkbox"/>	
Up and moving	<input type="checkbox"/>	<input type="checkbox"/>	
Residents you are licensed to serve	<input type="checkbox"/>	<input type="checkbox"/>	
Level of care	<input type="checkbox"/>	<input type="checkbox"/>	
Help residents maintain abilities (toilet, dress, eat)	<input type="checkbox"/>	<input type="checkbox"/>	
Schedule for staff to check on residents	<input type="checkbox"/>	<input type="checkbox"/>	
Written development plan produced	<input type="checkbox"/>	<input type="checkbox"/>	
Staff training to deal with aggressive individuals	<input type="checkbox"/>	<input type="checkbox"/>	
<u>LIVING SPACES</u>			
Size of facility	<input type="checkbox"/>	<input type="checkbox"/>	
Is facility licensed to provide care	<input type="checkbox"/>	<input type="checkbox"/>	
Disclosure Statement	<input type="checkbox"/>	<input type="checkbox"/>	
Basic Fee/ Initial payment required	<input type="checkbox"/>	<input type="checkbox"/>	
Service & costs available for additional charge	<input type="checkbox"/>	<input type="checkbox"/>	
If my needs change, are services available & what?	<input type="checkbox"/>	<input type="checkbox"/>	
Clean, well-kept, free from unpleasant odors	<input type="checkbox"/>	<input type="checkbox"/>	
Temperature comfortable	<input type="checkbox"/>	<input type="checkbox"/>	
Residents allowed to decorate own room	<input type="checkbox"/>	<input type="checkbox"/>	
Possessions kept secure	<input type="checkbox"/>	<input type="checkbox"/>	
Furnishings attractive	<input type="checkbox"/>	<input type="checkbox"/>	
Does the facility meet your requirements	<input type="checkbox"/>	<input type="checkbox"/>	
Do the residents appear happy	<input type="checkbox"/>	<input type="checkbox"/>	
<u>STAFF</u>			
Staff relationship friendly with residents	<input type="checkbox"/>	<input type="checkbox"/>	
Staff members in sight	<input type="checkbox"/>	<input type="checkbox"/>	
Name tags on staff	<input type="checkbox"/>	<input type="checkbox"/>	
Staff friendly to you	<input type="checkbox"/>	<input type="checkbox"/>	
Full time RN in nursing home at all times	<input type="checkbox"/>	<input type="checkbox"/>	
Continuing education performed	<input type="checkbox"/>	<input type="checkbox"/>	
Licensed doctor on staff	<input type="checkbox"/>	<input type="checkbox"/>	
Administrator open to questions	<input type="checkbox"/>	<input type="checkbox"/>	
Health monitoring checks	<input type="checkbox"/>	<input type="checkbox"/>	
Safeguards in place so I receive my medications	<input type="checkbox"/>	<input type="checkbox"/>	
Am I allowed to self-medicate	<input type="checkbox"/>	<input type="checkbox"/>	
Observe staff at varying times	<input type="checkbox"/>	<input type="checkbox"/>	

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
<u>SAFETY</u>			
Emergency exits, well-marked, unobstructed	<input type="checkbox"/>	<input type="checkbox"/>	
Lobby and hallway clean	<input type="checkbox"/>	<input type="checkbox"/>	
Non-slip surfaces / grab bars in restrooms	<input type="checkbox"/>	<input type="checkbox"/>	
Call button within easy access	<input type="checkbox"/>	<input type="checkbox"/>	
Fire drills	<input type="checkbox"/>	<input type="checkbox"/>	
Training for staff in case of emergencies	<input type="checkbox"/>	<input type="checkbox"/>	
Type of emergencies	<input type="checkbox"/>	<input type="checkbox"/>	
State inspected and when	<input type="checkbox"/>	<input type="checkbox"/>	
Any violations	<input type="checkbox"/>	<input type="checkbox"/>	
Submit plan of correction	<input type="checkbox"/>	<input type="checkbox"/>	
Review plan of correction	<input type="checkbox"/>	<input type="checkbox"/>	
<u>FOOD</u>			
Choice of food , menu available, special diets	<input type="checkbox"/>	<input type="checkbox"/>	
Snacks available and/or can be brought into home	<input type="checkbox"/>	<input type="checkbox"/>	
If I miss a meal, are other meals available	<input type="checkbox"/>	<input type="checkbox"/>	
<u>ACTIVITIES / SERVICES</u>			
Pharmacy deliver medications	<input type="checkbox"/>	<input type="checkbox"/>	
Can I continue to use my pharmacy	<input type="checkbox"/>	<input type="checkbox"/>	
Physical therapy program	<input type="checkbox"/>	<input type="checkbox"/>	
Social worker on staff – what training	<input type="checkbox"/>	<input type="checkbox"/>	
Active volunteer program	<input type="checkbox"/>	<input type="checkbox"/>	
Outdoor areas	<input type="checkbox"/>	<input type="checkbox"/>	
Organized field trips / activities	<input type="checkbox"/>	<input type="checkbox"/>	
Private areas available to meet with family	<input type="checkbox"/>	<input type="checkbox"/>	
Provides policy on pets	<input type="checkbox"/>	<input type="checkbox"/>	
Provides policy on visitors	<input type="checkbox"/>	<input type="checkbox"/>	
How often will my room be cleaned	<input type="checkbox"/>	<input type="checkbox"/>	
How often will my linens be cleaned	<input type="checkbox"/>	<input type="checkbox"/>	
Provider does my personal laundry	<input type="checkbox"/>	<input type="checkbox"/>	
Are washing machines available	<input type="checkbox"/>	<input type="checkbox"/>	
<u>DISCHARGE</u>			
Reasons for discharge	<input type="checkbox"/>	<input type="checkbox"/>	
Internal appeal process	<input type="checkbox"/>	<input type="checkbox"/>	
Notice given & how many days notice is given	<input type="checkbox"/>	<input type="checkbox"/>	
Assistance available, if proceeding with discharge	<input type="checkbox"/>	<input type="checkbox"/>	
<u>SPECIAL CARE / DEMENTIA</u>			
Staff training	<input type="checkbox"/>	<input type="checkbox"/>	
Staff to resident ration	<input type="checkbox"/>	<input type="checkbox"/>	
Policy on restraints	<input type="checkbox"/>	<input type="checkbox"/>	
Difference between this unit and rest of facility	<input type="checkbox"/>	<input type="checkbox"/>	
<u>OTHER COMMENTS</u>			