

Testimony of Philip J. Downey

Chairman Grassley, Senator Breaux, and members of the Committee, my name is Philip J. Downey. I am Vice President of Planning, Development and Regulatory Affairs for Marriott Senior Living Services, a division of Marriott International. Marriott Senior Living Services is the second largest operator of senior living in the U.S. Of the 20,000 units we operate in 29 states, 7,000 are assisted living units in a variety of community settings.

It is my pleasure to testify today on behalf of the American Seniors Housing Association (ASHA) which represents the interests of close to 250 of the nation's most prominent professional owners and managers of seniors housing and assisted living residences. ASHA's members are involved in all aspects of the development and operation of housing for seniors, including the construction, finance, and management of close to 500,000 units nationwide.

Overview of Assisted Living

Over the last 15 years a new long-term care alternative called Assisted Living has rapidly evolved in response to explosive demographic growth and growing consumer preference. As a result, today hundreds of thousands of American seniors live in a diverse range of assisted living communities where they receive the care and support they need to age with dignity. The emergence of Assisted Living as the consumer-driven alternative to nursing homes, has changed the long term-care landscape, and greatly improved the range of choices available to the nation's elderly and their families.

While assisted living residents have a diverse range of needs, they generally require help with one or more activities of daily living, or ADLs (e.g., bathing, dressing, toileting) such that they are incapable of living independently and require regular assistance.

Generally, residents in assisted living receive three meals a day; snacks; assistance with ADLs; medication administration; social activities; laundry and housekeeping; 24-hour emergency response, security; and transportation. In addition to providing these core services, some assisted living residences specialize in caring for certain segments of the elderly population, such as persons with Alzheimer's disease. Residences specializing in caring for those with Alzheimer's disease offer perhaps the best example of how assisted living has improved the lives of individuals and their families. Not more than 15 years ago, a person with mild or moderate dementia who needed help with some ADLs, but did not need medical care, had two very limiting choices: 1. move-in with a family member, or 2. live in a sterile, institutional setting such as a nursing home.

The market has responded to the sizable demand for assisted living with a broad range of alternative designs and service delivery models. Residents have the benefit of choosing from small "cottage" type designs of 20-40 units or larger full service models with 100 units or more. Also, there are residences at a range of prices depending on the preferences, needs and budgets of the resident. No matter the setting, the vast majority of assisted living residents (over 90 percent) live by themselves in a private apartment that they furnish with their own belongings. Unlike nursing home rooms, apartments in assisted living often feature kitchenettes, private bathrooms and lockable doors to maximize independence, dignity and personal privacy.

The typical assisted living resident is an 83-year old widow who cannot live independently and needs assistance with two to three ADLs. Approximately half of all assisted living residents have some degree of cognitive impairment. Most live within a 30-minute drive of their adult children and, according to a recent study conducted by the National Investment Center for the Seniors Housing and Care Industries,

more than half (52 percent) of all assisted living residents have annual incomes less than \$20,000.

The American Seniors Housing Association estimates that there are currently 6,500 purpose-built, professionally-owned and managed assisted living residences serving approximately 550,000 seniors in the United States. In the past three years alone, ASHA estimates that nearly 1,200 assisted living residences consisting of over 85,000 units have been built.

Hallmarks of Assisted Living: Private Payment and Customer Choice

Customer choice is the driving force for quality in this industry. Rapid and widespread consumer acceptance of assisted living has occurred despite the fact that assisted living is overwhelmingly paid for privately. By comparison, Medicaid alone pays for over 70 percent of all nursing home patient days.

Given the industry's growth and private pay orientation, assisted living operators must consistently provide high-quality housing and services in order to succeed. Indeed, the very nature of the purpose-built, professional assisted living marketplace demands that the needs of its customers come first, since private payors are often the only source of income for assisted living operators. The assisted living residences operated by the vast majority of professional companies exceed most state regulations in areas related to life safety features; unit size; staffing, training; and resident assessments.

Purpose-Built, Professionally-Owned and Managed

The typical assisted living residence that is reflected in the portfolios of the American Seniors Housing Association's membership has been designed and built for the purpose of providing high-quality assisted living services to frail elderly persons who need assistance with activities of daily living. The preponderance of these state-of-the-art properties have been built in the past five years. The relative newness of purpose-built assisted living residences has provided consumers with highly attractive and safe living environments, as these buildings must comply with stringent state and local building requirements.

Marriott is committed to the highest standards of life safety in our assisted living communities. While our Brighton Gardens are residential in appearance, they are constructed to comply with building code classification "Type 2", Institutional(non combustible), meaning a structural steel and concrete building with fire rated walls, conduit, sprinklers, emergency response systems and other features to ensure that residents are fully protected. In total we estimate these features add \$9-10 per sq. ft. to our assisted living communities compared to standard apartment construction.

Professionally-owned and managed, purpose-built assisted living should not be confused with "board and care" homes, which have existed for decades in this country, serving primarily very-low income persons, including seniors. While there are, of course, some fine board-and-care homes, the board and care industry, much like the nursing home industry, has had a very mixed record with respect to quality. And, although there are some states that have different nomenclature for board and care homes, it is not uncommon for these properties to be termed and even licensed as, assisted living. The differences in physical plant and life-safety features, staffing, training and overall quality between board and care homes and professionally-owned and managed assisted living residences are significant. Unfortunately, certain studies conducted in the past few years that have examined the assisted living industry have reached spurious conclusions because of samples that inappropriately include both board and care homes and assisted living residences.

State Regulation and Oversight

Despite misperceptions that assisted living has somehow escaped regulatory oversight, the reality is that this industry is well regulated at the state level. For the past three years, ASHA has tracked regulatory and statutory developments related to assisted living in all 50 states. Between 1997 and 1998, 23 states (46%) modified their assisted living statutory/regulatory requirements. Between 1998 and 1999, 30 states (60%) amended their assisted living statutory or regulatory requirements. In the past two years alone, 36 different states passed laws or revised regulations for this industry. ASHA expects that six of the 14 states that have not modified their assisted living regulatory framework in the past three years, will do so before this year ends.

Many state policymakers across the country recognize that there is a better way to meet the long-term care needs of seniors and have set out to chart a wholly different course in long-term care. They do not want to repeat the mistakes of the past that have resulted in highly "institutionalized" settings that are prevalent in nursing homes. Rather, a very purposeful effort has been undertaken by states to individualize and customize long-term care services through the concept of assisted living.

There are many fine examples, such as New Jersey, Arizona, Texas, Oklahoma, and Maryland where new regulations were developed with significant input from providers and consumer advocates. Indeed, one of the hallmarks of assisted living is the esprit de corps that has emerged among state regulators, providers and consumers in developing regulations. This broad level of participation has contributed, in large part, to the development of responsible regulations that are flexible and support quality care in a safe living environment.

Overwhelmingly, state legislative and regulatory activity has recognized the unique and important contributions of assisted living for their senior populations. By taking ownership of assisted living oversight, states have the flexibility to create innovative programs that best meet the needs of their seniors while upholding quality standards and taking regional preferences into account. In the end, it is the consumers who are the beneficiaries of state oversight of assisted living.

Industry Efforts to Educate Policymakers and Consumers

The American Seniors Housing Association, in partnership with a wide variety of interested parties, has provided numerous educational tools to state policymakers and consumers concerning quality and consumer protection. A brief summary of several of these efforts follows.

In the spring 1992, ASHA developed a model assisted living act to help state policymakers understand what was, at the time, a new industry. This effort was the first of several industry initiatives to assist state lawmakers and regulatory agencies in creating appropriate regulatory mechanisms to ensure quality shelter and services for assisted living consumers. The model assisted living act was distributed to every state licensing agency and legislature.

A collaborative effort, initiated in 1995, between ASHA and the American Bar Association's Section of Real Property Probate and Trust Law, Committee on Housing for the Elderly, resulted in the publication of a model Retirement Community Admission Agreement. This guide was prepared for attorneys and consumers to help identify issues that should be addressed and options to be considered in admission contracts. Thousands of copies of this publication have been distributed to consumers and their legal advisors in the past four years.

The Assisted Living Quality Coalition (ALQC), formed in 1996, is an example of an on-going collaborative effort between providers and consumers to offer guidance to states on appropriate quality

standards for assisted living. The Assisted Living Quality Initiative, published last August, accomplished two major objectives. First, it developed a system for measuring quality in assisted living by creating a partnership between consumers, regulators and providers. Second, the Initiative provided guidelines to state licensing agencies and policymakers to help develop and refine their assisted living standards.

In 1997, ASHA created a brochure entitled "Assisted Living Residency Agreements, Key Points to Consider when Choosing a New Home." This consumer-friendly brochure provides consumers and their families with two dozen critical questions that should be asked of prospective assisted living providers with respect to services and care: payment and pricing; and other important considerations.

To date, more than 30,000 of these brochures have been distributed free-of-charge by ASHA members to prospective residents and their families.

Most recently, in late 1998 and early 1999, ASHA and the Assisted Living Federation of America, the two largest industry trade organizations, worked together to prepare and distribute the Assisted Living Consumer Information Statement. This three-page form serves as a general guide for assisted living consumers about the care and services provided in different assisted living settings. It provides consumers with uniform information on resident fees and services; move-out and discharge criteria; staffing; and safety features. This project will allow prospective assisted living residents to easily compare one residence to another in order to help make the most informed decision about which assisted living residence will best meet their needs. Copies of the Assisted Living Consumer Information Statement have been distributed to over 5,000 assisted living providers, and are available to the general public on the world wide web at no cost.

Corporate Efforts to Educate Consumers

From Marriott's perspective, the residency agreement is the most important document any resident will receive. That is why we take it very seriously. It is an important document because it covers all of our obligations, our commitments to the resident and their obligations to us. It is the basis for what forms the partnership between Marriott and our residents.

As part of the process of introducing prospective residents to Marriott Senior Living, our staff are trained to review the residency agreement with residents and their families so that they understand the terms and obligations of the agreement. Although most of our residents do not find it necessary to seek an outside review of the contract, we also encourage residents, prior to move-in, to share the agreement with an attorney.

All states require that the resident and the assisted living residence enter into a written contract. Prior to developing a residency agreement, our Legal department carefully reviews the state specific regulations regarding the residency agreement to insure that we have included all of the necessary elements for the contract to be valid.

At Marriott, our Agreements are written to be clear, readable, specific and cover many areas, several of which are highlighted below:

- the specific services to be provided and the charges for those services;
- the assessment process to be used to determine the resident's level of care;
- the amount of staff assistance required to help the resident meet their needs;
- notification procedures when there is a change in a resident's level of care;

- fee schedule, payment schedule, and rate change notification provisions;
- term, transfer, and discharge provisions;
- authorization for records and release of health care records where expressly required or allowed by law;
- responsibilities of the resident;
- resident rights;

In closing, I would again like to thank the Committee for the opportunity to address them today concerning assisted living. As a leader in this exciting industry our focus will remain on providing a quality product for all of our customers. Our efforts to provide that quality go hand-in-hand with our goal to educate the consumer (and the policymaker) about what assisted living is, what it provides, and how it can be the best possible choice for our nation's elderly.