

Robert Lohr
on behalf of
The National Center for Assisted Living

Good afternoon Chairman Grassley and members of the Committee. My name is Robert Lohr and I am Founder and President of Peridot Enterprises, Inc., which operates several assisted living facilities in Florida and a nursing and assisted living facility in Pennsylvania. I also have just recently become the Chairman & CEO of a small public company that specializes in assisted living in Florida. I have worked in the long term care industry for more than 20 years, starting my career in nursing homes and later diversifying into assisted living. During that time, I have developed, constructed or managed more than 25 assisted living facilities.

I am here today on behalf of the National Center for Assisted Living (NCAL), the assisted living voice' of the American Health Care Association. NCAL represents nearly 2,000 proprietary and non-proprietary assisted living and residential care facilities nationwide. NCAL is committed to fostering growth in assisted living and ensuring that people have access to quality assisted living services by supporting responsible public policies, providing professional education and development services, and by being an information and research resource for the public, state and federal policymakers and the media.

Assisted Living: An Innovative Approach

Based on a Scandinavian model for senior living, assisted living first emerged in America during the mid-1980s, and that is when I first became involved in this exciting new industry. Unlike other medical models found in most health care settings, assisted living is based on a social model of care which translates into a holistic approach toward serving residents. Independence, autonomy and choice are words that define assisted living and are the concepts that have made assisted living so popular with the public. People living in assisted living residences receive help with their daily lives so that they can retain their sense of individuality and belonging in their communities.

State governments regulate the assisted living industry primarily through licensure and certification laws. Assisted living and residential care regulations vary widely across the nation but generally cover issues such as the physical setting, services, staffing, staff training, and resident admission criteria. Some states have very strict guidelines on who may live in an assisted living facility, while other states are more flexible and allow residents to "age in the right place" for longer periods of time. You heard from experts earlier this afternoon about how assisted living is being regulated. Instead, I want to speak to how and why governments should regulate assisted living differently than it has regulated the nursing home industry.

While there are many variations in the way states regulate assisted living, the greater freedom states have to design their own systems makes for more responsive and proactive oversight. We know too well the many problems and conflicts in the federal and state regulation of nursing homes. It would be a mistake to burden assisted living with a system that doesn't work. Alternatively, the focus on the individual is the foundation of the assisted living philosophy. Indeed, it is consumers who have been driving the popularity of and growth in assisted living, not government programs, regulations or funding. This is an important fact to recognize.

Nursing facilities are required to follow myriad regulations from a multitude of state and federal regulatory agencies. It's a cookie cutter approach that's rooted in treating every resident and facility in a similar manner through regimented policies and procedures. This approach doesn't necessarily translate

into the types of services and programs sought by residents and families. In the last 20 years I observed the nursing home industry shift from being relatively home-like facilities to routine-laden institutional settings in an effort to comply with regulation after regulation.

On the other hand, one of assisted living's greatest strengths is its ability to mold and shape itself to fit the needs of the individual customer: the forces shaping assisted living have come from the customer. Regulations, by their very nature, create a cumbersome system in a bureaucratic attempt to achieve conformity and maintain the status quo. In some instances, such as fire safety codes, regulatory conformity is desired and essential. However, in an industry that's designed to allow people to live as independently as possible, the way they would live their lives in their own homes, it becomes apparent that a "one size fits all" approach to regulating such an industry becomes difficult, if not impossible and certainly not desired by the consumer. Overly rigid regulation and inconsistent quality measurement will destroy individuality - the hallmark of assisted living.

Complaint and Corrective Action Process

I was asked to discuss how the grievance and corrective process compares in both the nursing home and assisted living industries. The assisted living and nursing home industry's complaint and corrective action processes resemble one another to a degree. While they are similar in structure and both industries have systems to effectively handle and resolve resident complaints, the assisted living industry has the flexibility to work cooperatively with states.

For example, in Pennsylvania and Florida, the law requires assisted living facilities to give residents a written bill of rights upon admission. The bill of rights must advise residents how to lodge a complaint within a facility and mandates that assisted living facilities post the name, address, and telephone numbers of the district ombudsman and other adult advocacy organizations. Similarly, nursing facility regulations spell out a resident's right to voice grievances and the facility's duty to actively seek a resolution. NCAL believes that all facilities should have clear policies and procedures for resolving complaints from residents or their families.

If complaints cannot be resolved internally, residents can also turn to state ombudsman programs for resolution. The ombudsman program works the same for assisted living facilities as it does for nursing facilities. Because the same ombudsman is frequently used for both settings, NCAL believes that it is important to train ombudsmen about assisted living to ensure that they understand the differences between the two settings and don't perform their duties based solely on their experience with nursing facilities.

Finally, just as nursing facilities allow residents to organize and participate in resident groups that respond to resident grievances, assisted living facilities in Pennsylvania and Florida are required to facilitate the organization of resident councils, through which residents may lodge complaints. NCAL strongly supports the concept of self-governing resident councils and has included this in our list of resident rights that are paramount to the assisted living consumer.

As a young and expanding industry, assisted living has been able to utilize the best practices found in long term care and tailor them to meet the needs of residents.

Government Oversight in the Next Century

You already are familiar with the Assisted Living Quality Initiative released last year by the Assisted Living Quality Coalition (ALQC), a group comprised of NCAL, the other three organizations

represented on this panel, the Alzheimer's Association and AARP. The initiative includes guidelines to assist state policymakers with their own oversight of assisted living.

It is NCAL's and the ALQC's strong belief that assisted living regulation and oversight should remain on the state level. More importantly, the ALQC initiative envisions a quality measurement system for assisted living that focuses on customer satisfaction and actual outcomes. Such a system could be utilized by providers, consumers and government to ensure that quality services and care are being maintained and, even more importantly, improved on a continuing basis. Developing a quality performance measurement system would better serve the interests of the assisted living customer by providing each resident with powerful input into the quality evaluation process and the delivery of services. Let me highlight the direction in which we need to move.

Customer Satisfaction

Customer satisfaction is probably the single most important component of a quality measurement program. It's important for consumers, families and providers. It should be equally important to government. Assisted living is a people business with a holistic approach to care. Our main goal is not to cure a disease or illness as other health care providers do, but to help an individual manage and live life to its greatest potential. Tracking whether a facility is successfully achieving that goal in the minds of residents and families is paramount in assessing how well a facility is performing.

NCAL already has accomplished much in the area of customer satisfaction measurement in the assisted living setting. In 1996, NCAL, working with the Gallup Organization and the University of Wisconsin, conducted research and developed and tested a customer satisfaction assessment questionnaire. We would like to submit a copy of this questionnaire for the hearing record.

As part of our research and questionnaire development, we learned a great deal about what satisfies assisted living customers. Our research identified many key satisfiers in several areas such as management, resident's rights, facility structure, staffing, and assistance with transition upon moving into a residence. From our research we built a questionnaire designed to measure those factors that residents deem important to the sense of satisfaction and well being. Thousands of copies of that instrument have been distributed free of charge and are being used by assisted living facilities nationwide. This is the type of instrument that the ALQC envisions being used by providers to measure customer satisfaction.

Performance Indicators

Beyond customer satisfaction, any quality measurement system must also include measurement of actual performance. The ALQC identified three primary outcome measures: clinical, quality of life and functional outcomes.

To be able to measure performance, certain data about each resident must be obtained, tracked and updated. From this data, quality indicators can be identified and utilized to track the outcomes of the care and services being provided by a facility. The benefit to such an approach from a facility operations standpoint is that problems can be quickly identified and fixed. NCAL strongly believes that quality measurement is an ongoing process, not an annual inspection. More importantly, a facility can use this data as part of its continuous quality improvement program. This data gives facilities the ability to measure their performance over a period of time and identify trends on a facility and individual basis. Facility data can also be included in a network of data from facilities across the country which would facilities to see how their performance compares to other facilities in their community, state, or

nationwide. Continuous monitoring of performance is also a more dignified and reliable way for staff to evaluate how well they are doing their jobs.

Development of Assisted Living Performance Indicators

The ALQC is working to develop appropriate outcome performance indicators for assisted living. In June, the ALQC is holding a summit of stakeholders including regulators, providers, consumers and third party payers to hear from leading researchers on performance measures. Some of those researchers testified before you today. The ALQC's plan is to use the summit as the first step toward developing performance indicators. We don't have all the answers today about what those performance indicators will be and how they will be implemented. However, the ALQC, and NCAL in particular, is committed to developing the indicators, testing them, and helping states and facilities utilize the indicators to measure performance outcomes.

State Monitoring of Quality

Performance outcome indicators and customer satisfaction data have been proven to be powerful tools in assuring quality in nursing facilities. NCAL believes the same will be true for assisted living residences. But they also have tremendous potential at the state level for monitoring quality. NCAL believes that states should use these measures in lieu of traditional survey processes for most providers. Rather than focusing on annual checklist inspections, states would be able to attain regular reports about a facility's performance throughout the year. Further, the information that they would use to evaluate facilities will shed far more light on how a facility is performing than any state survey could hope to deliver.

NCAL and the ALQC believe in the concept of separating the state's monitoring role into two distinct functions. The first role is one of consultant, the second as advisor. As consultant, the state would oversee the performance of facilities by monitoring outcome indicators and customer satisfaction data. When performance data indicate that a problem exists or may be developing, the state can work in a consulting role with the facility to precisely identify that problem and formulate a solution. The state's role as advisor would be to review facility plans to correct a problem and to make recommendations or share best practices and protocols with facility staff.

The common goal of both provider and regulator should be quality care and services. We believe creating a structure that allows both regulator and provider to work together to achieve this common goal will help ensure consistent quality and benefit the assisted living resident. States should also explore incentives for their best performers to recognize excellence in the assisted living field.

The partnership proposed by the ALQC is a dramatic departure from the way government regulates nursing homes. The nursing home survey and enforcement system is built on penalizing facilities for what they are doing wrong, regardless of the severity of the citation. It's a punitive system. A far more effective and efficient system is one where providers and regulators look at facilities' performance data on an ongoing basis. Providers should be able to ask the state for advice if it identifies a problem without fear of retaliation. Further the state should be permitted to give that advice.

Clearly, the state has a duty and responsibility to ensure the well-being of residents living in state licensed facilities. Instances will occur when the state needs to ensure that a facility is living up to its responsibility to provide quality services. However, state regulatory staff responsible for enforcement should not be the same staff with advisory and monitoring responsibilities. It is important to avoid the commingling of these responsibilities if these two necessary functions are to operate in the manner in which each is intended. Despite these separate responsibilities, clear and open lines of communication

are necessary if such a two-tiered system is to work efficiently and effectively.

Other Uses of Performance Measures

Another compelling reason to utilize outcome indicators and customer satisfaction for assisted living is for third party payers that will utilize assisted living services. Managed care is likely to rely more heavily on assisted living in the future. Long term care insurance is another payer with a vested interest in facility outcomes. It is logical to build a system that measures performance in terms that these payers can use. It continues to be very unlikely that any managed care entity is going to enter into a relationship with an assisted living facility simply because that facility did well on a state survey. Why? Because it is recognized that such a survey tells very little about how well a facility delivers care or how satisfied people are with a facility's services -- two vital concerns of managed care entities and long term care insurance companies.

Consumers also can benefit from such a system. Possibly for the first time, consumers will have accurate and tangible information about how well a facility does its jobs. This information, or report card, could be used by current and potential residents and their families to evaluate facility performance.

Conclusion

Assisted living is an innovative long term care model that is becoming increasingly popular with the public. We are better equipped to serve the elderly and disabled today than previous generations of long term care providers. Medical advancements, gerontological research and technological advancements have given providers powerful new tools, ideas and means for serving the elderly. The assisted living industry is in its adolescence and is still maturing and growing. Government policies should nurture this growth, not stunt it.

While the GAO report has identified areas of concern, I would urge the Committee, or any policymaker, not to regulate an industry based on the performance of a small minority of providers. Assisted living providers have a duty to act responsibly and to deliver the quality of services that you or I would expect for our parents or ourselves. Quality should be measured in assisted living and poor performing providers can and should be rooted out of the industry. NCAL recommends that policymakers on all levels follow the lead of the Assisted Living Quality Coalition. We urge that they model their quality assurance programs after those outlined in the ALQC's quality initiative.