

Assisted Living – Housing with Services

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What is this session about?

- What is assisted living?
 - The industry – overview of history, scope, types, cost, funding
 - Resident side perspective (informed by personal experience)
- How does it fit within a disability rights framework?
 - Nursing home alternative or housing with services
 - Institutional or community setting
- How does it fit within a legal rights framework?
 - Oversight and resident rights
 - Landlord-tenant
 - Fair Housing Act (FHA)
 - ADA / Olmstead

What is assisted living?

- No nationally definition
- As a term, first used by a movement to create an alternative to nursing homes in the 1980s Oregon
- One branch of the movement focused on enriching housing with services, another branch on making a health care setting more homelike
- The National Center for Assisted Living (NCLA) is “is the assisted living voice of the [American Health Care Association](#) (AHCA).”

NCAL's Principles for Assisted Living

- Serves primarily elderly people and individuals with disabilities.
- “Assisted living is more than a physical setting – it embraces a philosophy of care.”
- Provide assistance with activities of daily living and residents’ health-related needs.
- Strive to meet the social, emotional, cultural, intellectual, and spiritual well-being of residents.
- Also known as: residential care, personal care, adult congregate care, boarding homes, and domiciliary care.

Facts and Figures (From NCAL)

- There are approximately **28,900** assisted living communities with nearly **1 million** licensed **beds** in the United States today. The average number of licensed beds in an assisted living community is **33**.
- **8.6%** Northeast, **22.6%** Midwest, **28.0%** South, **40.8%** West
- **56%** chain affiliated (2 or more), **42%** independently owned
- **14.3%** have a dementia care unit, wing or floor designated, **8.7%** only serve adults with dementia

Typical Services (NCAL)

- 24-hour supervision and assistance
- exercise, health and wellness programs
- housekeeping and maintenance
- meals and dining services
- medication management or assistance
- personal care services (such as Activities of Daily Living [ADLs])
- transportation

Residents (NCAL)

- **811,500*** residents, **71%** women, **29%** men
- **7%** are 64 and under, **11%** are 65-74, **30%** are 75-84, **52%** are 85+
- **64%** need help bathing, **57%** with walking, **48%** dressing, **40%** toileting, **29%** bed transfer, **19%** eating
- Median stay ~ **22 months**, ~ **60%** go to a skilled nursing center.

*1.4 – 1.5 million in nursing homes

Workforce (NCAL)

- 453,000 employees
- 20% of nursing related and social work employed in long term care
- Breakdown:
 - 83.3% aide
 - 9.9% licensed practical or vocational nurse
 - 6.1% registered nurse
 - 0.8% social worker

What does it cost annually? (Genworth 2019)

• Homemaker service	\$51,480
• Home health aide	\$52,624
• Adult day center	\$19,500
• Assisted Living	\$48,612*
• Nursing home -double	\$90,155
• Nursing home -single	\$102,200

*In Missouri, less than \$3,000/month, in DC, more than \$11,000/month

<http://investor.genworth.com/investors/news-releases/archive/archive/2019/Genworth-Cost-of-Care-Survey-2019-Skyrocketing-care-costs-may-make-the-dream-of-aging-at-home-more-challenging/default.aspx>

Who pays?

- Private pay (e.g., long term care insurance, personal finances)
- Medicare does NOT cover assisted living, although most ALF residents are Medicare beneficiaries.
- 16.5% (~1/6) of ALF residents rely on a state Medicaid program
 - Medicaid state plan authorities,
 - § 1915(c) HCBS waiver,
 - concurrent § 1915(b) managed care waiver, or
 - §1115 research or demonstration programs.
- Medicaid does not pay for the room and board costs, only the personal care and supportive services.

Resources on Medicaid and Assisted Living

- COMPENDIUM OF RESIDENTIAL CARE AND ASSISTED LIVING REGULATIONS AND POLICY: 2015 EDITION, HHS OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION
<https://aspe.hhs.gov/basic-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition>
- Medicaid Home and Community Based **SETTINGS** Requirement Toolkit
<https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-settings-requirements-compliance-toolkit/index.html>

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- **The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community,**
 - including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

Are ALF's discriminating against people with disabilities?

- “Assisted living facilities are ideal for seniors who are fairly independent but require assistance with daily activities, such as bathing, cooking, shopping, etc. An assisted home is a great first transition for your loved one if they have never lived outside of their own home. ”
 - <https://www.assistedlivingcenter.com/differences-between-nursing-homes-assisted-living-facilities/>
- What about younger people with disabilities?
- Specialized housing by diagnosis

Mobility Impairments

Fair Housing Justice Center, Inc. v. Cuomo, No. 18-CV-3196 (VSB), 2019 WL 4805550 (S.D.N.Y. Sept. 30, 2019) (MTD); 2018 WL 4565152 (S.D.N.Y. Sept. 24, 2018) (PI)

Fair Hous. Justice Ctr., Inc. v. Cuomo, 2018 WL 4565152

[Complaint](#) (PDF), **Case Issue:** Does a blanket prohibition barring users of wheelchairs from living in Adult Care Facilities regulated and funded through New York State's Department of Health violate the Fair Housing Act, the ADA, and other civil rights laws?

- ***Wheelchairs Prohibited in the Last Place You'd Expect. Paula Span,***
<https://www.nytimes.com/2018/04/30/health/wheelchairs-assisted-living.html>
- ***Discrimination Is Hard to Prove, Even Harder to Fix, Paula Span,***
<https://www.nytimes.com/2019/07/22/health/age-discrimination-legal.html>

Mental illness

- *H.O.P.E., Inc. v. Eden Mgmt. LLC*, No. 13-CV-7391, 2017 WL 4339824 (N.D. Ill. Sept. 29, 2017)
- Medicaid HBCS Waiver - Supported Living Program
- Targeted to a) those under 64 with physical disabilities
b) those 65 and older
- Prohibited admission to those with serious and pervasive mental illness and those with mental illness; SLF's by report and upon testing denied applications to anyone with a whiff of mental health diagnosis or asked to cover it up
- Brought case under FHA, ADA, and 504, won against MTD (above)
- Comprehensive settlement, with monitoring and enforcement, \$900,000 attorneys' fees from state, damages from SLFs

Harassment

[Brief](#) (PDF) and [Opinion](#) (PDF)

Lesbian resident of community for older adults alleged that she suffered severe and pervasive harassment from other residents, as required to state hostile housing environment claim against community's operator under Fair Housing Act (FHA); for 15 months, resident was allegedly bombarded with threats, slurs, derisive comments about her family, taunts about a deadly massacre, physical violence, and spit.

Wetzel v. Glen St. Andrew Living Cmty., LLC, 901 F.3d 856 (7th Cir. 2018), cert. dismissed sub nom. Glen St. Andrew Living Com. v. Wetzel, 139 S. Ct. 1249, 203 L. Ed. 2d 269 (2019)

Resident needs and ALF Services

- Can resident bring in their own services?
 - more hours of same type of care
 - different type of care
- Ability to meet needs of resident
 - Admission
 - Termination
 - Change in level of care
- *Bell and Herriot* cases

Terms and Conditions

- Permission to leave, need “responsible person”
- Curfew
- Overnight visitors
- Dining room – *Hyatt, Norfolk*
<https://newoldage.blogs.nytimes.com/2012/02/09/tables-reserved-for-the-healthiest/>
- Bingo <https://www.nytimes.com/2015/02/03/science/a-facilitys-bingo-call-you-cant-play.html>

Landlord and Tenant Law

- Look to state Landlord and Tenant law as a source of rights (in addition to assisted living resident rights or regulatory scheme in your state).

Ryan v. Mary Ann Morse Healthcare, Supreme Judicial Ct., Mass. SJC-12708 12/5/2019

AARP's [Amicus Brief](#) (PDF) and [Decision](#) (PDF)

The SJC held that the ALR statute incorporated the Landlord-Tenant Security Deposit Law. As a result, ALRs may no longer charge an upfront general community fee like the \$2,800 fee at issue in this case. ALRs can still charge an upfront fee for the distinctive assisted living services not applicable to traditional landlord-tenant relationships, such as initial assessments of residents to determine their suitability for placement in an assisted living facility.

Assisted Living in an Olmstead Framework

- Are they the problem or the solution?

Olmstead and ADA Resources

- AARP Foundation disability discrimination cases, including Olmstead: <https://www.aarp.org/aarp-foundation/our-work/legal-advocacy/afl-docket-livable-communities.html>
- *Brown v. DC Olmstead* press announcement and US Court of Appeals for the D.C. Circuit opinion:
 - https://www.aarp.org/content/dam/aarp/aarp_foundation/litigation/2019/Brown-v-DC-Announcement.pdf
 - https://www.aarp.org/content/dam/aarp/aarp_foundation/litigation/2019/Brown-opinion.pdf

Other Olmstead Cases

- ADA webpage:
https://www.ada.gov/olmstead/olmstead_cases_list2.htm
- *Pitts v. Greenstein*:
<https://www.clearinghouse.net/detail.php?id=12541>
- *Chambers v. San Francisco* settlement:
https://www.disabilityrightsca.org/system/files/file-attachments/Summary_of_Settlement-2009-05-22.pdf
- *Darling et al. v. Douglas et al., C09-07398 SBA* settlement:
<https://www.disabilityrightsca.org/system/files/file-attachments/FinalADHCSettlementSummary11-17-11.pdf>