

Assisted Living Facilities in Virginia



by William T. Wilson
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ALFs in Virginia are regulated by the Department of Social Services (DSS) because they are considered “non-medical” residential settings. The DSS states, “Assisted living facilities are *not* nursing homes. A nursing home is a facility in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more non-related individuals. Nursing homes are regulated by the Virginia Department of Health.”

This medical/nonmedical distinction is a key part of the purpose for ALFs. However, investigations by state agencies and the news media, most notably *The Washington Post*, have found that ALFs in Virginia are being used for purposes for which they were neither intended nor equipped to handle. ALFs are becoming increasingly popular as alternatives to nursing homes and as another type of institution for the mentally challenged. By the mid-1990s, nearly half of ALF residents suffered mental disabilities. The Virginia Uniform Assessment Instrument (UAI), a set of guidelines used to determine the level of care needed by patients, was

For nearly thirty years, Assisted Living Facilities (ALFs) have been used by many older or disabled adults in Virginia in need of assistance in daily living activities. These private, state-regulated establishments care for more than thirty-four thousand people in Virginia. The Senior Lawyers Conference is concerned about a number of issues affecting ALFs in Virginia, including growing numbers of residents, increasing needs of residents, a shrinking available labor pool and inadequate funding and regulatory oversight.

The *Code of Virginia* defines Assisted Living Facilities as:

“any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting.”

updated in the early-1990s. It assists ALF staff in distinguishing mentally disabled patients whose needs can be met in an ALF from those who need other types of facilities. A 1997 Joint Legislative Audit and Review Committee (JLARC) study found that the assessment instrument was still an insufficient tool because ALF staff were not trained to use it.

The Department of Social Services has been challenged in regulating ALFs. A series of *Washington Post* articles demonstrated some disturbing trends. Records show that across the state and in all types of homes, many disabled and vulnerable adults experience poor care and inadequate supervision. These patients represent a range of backgrounds and afflictions. As the industry has grown, so has the number of complaints. Grievances lodged with Adult Protective Services, a division of the DSS, have increased by two-thirds in the past eight years.

According to national studies, the problems in Virginia's facilities are common across the country, but Virginia is the only state in which all the homes were disqualified from a federal funding program after inspectors in 1999 found medical and physical neglect of residents.

According to the *Post* articles, a large part of the problem may be due to the inability of state agencies to enforce regulations with significant fines and revocation or suspension of ALF licenses. Compared to other states, Virginia has less stringent regulation of its homes and weaker enforcement tools. Maryland, for example, can impose a ten-thousand-dollar fine when a home violates standards. That compares to a maximum fine of five hundred dollars in Virginia. In the past decade, resident deaths and injuries in Virginia have triggered dozens of lawsuits against facilities.

Some ALFs have compromised the health and safety of their residents in the following ways:

- Acceptance of residents in need of medical care which their staff is not equipped to provide.
- Inadequate supervision of residents.
- Insufficient staff numbers.
- Gross undertraining of staff.
- Failure to properly distribute medication to residents.
- Insufficient facility preparation for emergencies such as fires.

These deficiencies in care have led to the abuse, neglect or exploitation of over four thousand ALF residents in the past ten years. Fifty-one deaths and 135 other cases of sexual assault or physical injury can be, directly or indirectly, attributed to poor standards of care. A number of incidents involving ALF residents were outlined in detail in the *Post* series.

- A female resident suffered uncontrolled seizures in November 2002 at an ALF in Richmond after staff workers failed to dispense her epilepsy medication for twenty-five days. At the hospital, doctors worked for two hours to stop the seizures and were forced to administer drugs to paralyze the woman and put her on a ventilator, which saved her life.
- A seventy-nine-year-old female resident, an Alzheimer's patient whose husband visited her daily, burned to death in September at an ALF in Henry County. The fire started at a laundry room electrical outlet and spread quickly through the one-story brick building. When fire-

fighters arrived, they found her lying half inside a doorway, her hair and clothes on fire.

- At an ALF in Springfield, a man with dementia wandered into the room of an eighty-one-year-old woman while she slept and repeatedly punched her in the face, severely bruising her. Three weeks earlier, staff members had found the same man in another woman's room, holding her head under the covers and telling her to "shut up."
- From 1997 through 1999, state officials reprimanded an ALF in Danville for a range of problems, including abuse, neglect and insufficient staff. Residents at the home—a rundown, leaky building—were eating out of a nearby trash bin.

The *Post* article also includes a quote from the DSS director of licensing, Carolynne Stevens. Ms. Stevens, in an e-mail to her colleagues, said, "The assisted living industry has been used as a dumping ground and a cost dodge for twenty-five years. It will be a dangerous place for vulnerable people until we stop kidding ourselves that is a sane or moral approach."

Besides the JLARC review of 1997, there have been a number of other studies by state agencies. JLARC conducted evaluations of ALFs in 1979 and 1990. The Joint Commission on Health Care reviewed financial and licensure aspects of ALFs in 1998 and 1999. The Virginia Department for the Aging and the Aging Action Agenda Task Force have conducted ongoing studies of ALFs as part of the Virginia State Plan for Aging Services.

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Subcommittee on Admission Criteria and Level of Care reported the following problems with ALFs:

- Improper medication management.
- Poor risk assessment and enforcement guidelines including negligible fines.
- Lack of cooperation between the DSS and the Department of Mental Health, Mental Retardation and Substance Abuse Services.
- Insufficient screening of potential residents.
- Inaccessibility of potential residents' medical records to ALF staff.
- Lack of funding and access to information on obtaining funding.

The Aging Action Agenda Task Force has recommended the following actions to help alleviate these problems:

- Requiring that ALFs have certified nurse assistants with medication management training.
- Increase health care oversight from quarterly to monthly.
- Increase maximum fines from five hundred to ten thousand dollars.
- Develop cooperative licensing between the DSS and the mental health department.

- Standardize training for potential-resident screeners.
- Educate ALF staff about the availability of additional Medicaid and Medicare funding.

A number of statutory, regulatory and administrative activities are currently in motion that may help to improve conditions in ALFs. Over a dozen bills were introduced in the 2005 General Assembly addressing licensure procedures for ALFs. Two complementary bills—HB 2512 and SB 1183—were passed. These specifically address several commonly recognized problems.

HB 2512 requires administrators of assisted living facilities to be licensed by the Board of Long-Term Care Administrators within the Department of Health Professions. The bill renames the Board of Nursing Home Administrators as the Board of Long-Term Care Administrators. The licensing provisions will not take effect until July 1, 2007. The Board of Long-Term Care Administrators will submit proposed criteria for licensing assisted living facility administrators on or before January 1, 2006.

SB 1183 permits the commissioner to issue an order of summary suspension of a license to operate an assisted living facility and adult day care center (licensee) in cases of immediate and substantial threat to the health, safety, and welfare of residents or participants. The bill also authorizes the commissioner to deny, revoke, or

summarily suspend certain authority of the licensee to operate. It may permit the licensee to operate, but may restrict or modify the licensee's authority to provide certain services or perform certain functions that the commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the residents or participants. Prior to any summary suspension, the commissioner must appoint an acting administrator.

The bill also increases the maximum civil penalties for assisted living facilities from five hundred to ten thousand dollars per license period. It directs that the civil penalties be paid into the newly created Assisted Living Facility Education, Training, and Technical Assistance Fund to provide education and training for staff of and technical assistance to facilities. The bill requires ALFs to have mental health screening for residents, and an individualized services plan must be developed for mentally challenged residents. The bill requires ALFs to disclose information about the services, policies, staffing patterns, fees, and ownership structure of the facility, and a description of conditions that would require the discharge of a resident from the facility.

In addition to the changes mandated by HB 2512 and SB 1183, the Governor's proposed budget included regulatory staff increases to permit more frequent inspections of facilities; several budget amendments were introduced in both houses to increase the amount of ALF Auxiliary Grants, including related amendments to eliminate the obligation for localities to pay 20% of such grants to residents.

The State Board of Social Services has begun taking its own steps toward improvement of ALFs in Virginia. The board approved a Notice of Intended Regulatory Action at its December meeting.

On January 3, the DSS launched the first phase of its planned Web-posted inspection reports a full year early, in order to increase information available to the pub-

lic. The information, which dates back one year, is available by going to www.dss.state.va.us and clicking on either “Adult Day Care” or “Assisted Living Facilities” on the left rail under the heading “Adults.”

A number of ALF administrators have taken internal steps in anticipation of changes. They have increased the training opportunities currently available to their staffs and are planning to tailor the training to changes as they come—particularly those related to care of high-need populations and management.

It would seem, as a practical matter, that the distinction between nursing homes and ALFs has become somewhat blurred. Many ALF residents are severely mentally challenged or otherwise incapable of taking care of themselves. Although nursing homes are heavily regulated, ALFs are comparatively free from regulation. A recent edition of *Trial* magazine said that ALFs are rapidly becoming the nursing homes of the future. Under the present

system, however, they are taking on responsibilities they are not equipped to handle. For example, some ALFs have accepted patients who either had or were at severe risk for developing pressure sores. This practice is in violation of Virginia’s regulations, which prohibit ALFs from admitting or retaining patients who have pressure sores; who are ventilator dependent; who require nasogastric tubes or intravenous therapy; and who need continuous licensed nursing care.

There is a need for a critical look at existing ALF standards of care for senior citizens. The procedures being used for the screening and placement of senior citizens at the proper level of care (nursing homes *versus* ALFs) and the existing state regulatory scheme require careful scrutiny. Where it can be of service, the Senior Lawyers Conference will be ready to help. ☺



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