

HEALTH LAW

Expert Analysis

A Primer on Senior Living Facilities

For generations, as people aged, too many of the frail elderly found themselves placed in nursing homes where many of them stayed for the remainder of their lives. Fortunately, today, there is a medical and social consensus that elderly people should be encouraged to stay in their own homes, and as needed, to receive appropriate support services for as long as they reasonably can. This is not only far more humane to the elderly, but in most cases it is their own clear preference. Moreover, being able to “age in place” can also reduce the sizable expenses associated with long-term nursing home care, particularly for the Medicaid program. For example, a senior citizen who has had a stroke may be hospitalized to receive treatment for the stroke, then spend some time in a skilled nursing facility to receive physical therapy and rehabilitative services, and then be returned home to continue recuperating with the assistance of a home health care services provider.

Even without a serious health episode like a stroke or heart attack, elderly people with the usual health problems associated with advancing age have more options for staying in their own homes. Indeed, as the population ages, particularly the Baby Boom generation, older individuals and their families will increasingly be seeking suitable so-called “supportive housing.” As opposed to an apartment building that happens to have numerous elderly individuals living on their own (see, e.g., “naturally occurring retirement communities”

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as defined in NY Elder Law §209), supportive housing offers living quarters and makes various levels of assistance available to residents depending upon their physical and mental needs. New York has

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comprehensive regulatory authority over supportive housing facilities, and this column will explain the various categories of housing and the types of support services they provide.¹

Adult Care Facilities

The New York State Department of Health licenses and supervises what are classified as Adult Care Facilities (ACF), which are defined by law as facilities that provide:

... temporary or long-term, residential care and services to adults who, though not requiring continual medical or nursing care as provided by [hospitals, nursing homes or mental health

facilities] are by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

NY Social Services Law (SSL) §2(21).

There are several different types of ACF. The most basic is a Residence for Adults (RFA) which is “established and operated for the purpose of providing long-term residential care, room, board, housekeeping and supervision to five or more adults, unrelated to the operator.” These residences are for adults who can still live relatively independently. SSL §(2)(24). Next is an Adult Home, which is an RFA that also provides personal care services. SSL §(2)(25). Personal care services include direction and assistance with grooming (including care of hair and ordinary care of nails, teeth and mouth); dressing; bathing; walking and ordinary movement from bed to chair or wheelchair; eating; and assisting with self-administration of medications.

The third category of ACF is an Enriched Housing Program (EHP), which is defined as being:

... established and operated for the purpose of providing long-term residential care to five or more adults, primarily persons sixty-five years of age or older, in community-integrated settings resembling independent housing units. Such program shall provide or arrange the provision of room, and provide board, housekeeping, personal care and supervision.

SSL §(2)(28).

EHPs are for older adults who need personal care and supervision for less than

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24 hours a day. EHPs must offer residents help with their medication, serve at least one hot meal a day, and have other food available.

The fourth category of ACF is an Assisted Living Residence (ALR), 10 NYCRR §1001.2, which is a certified Adult Home or EHP that has been additionally approved by the New York State Department of Health for licensure as an ALR. An ALR operator is required to provide or arrange for the following for its residents:

- housing
- 24 hour on-site monitoring
- personal care services and/or home care services in a home-like setting for 5 or more adult residents
- daily meals and snacks
- case management services

In an ALR, residents may have their own room, a small apartment, or may share space with a suitable roommate, and they share common areas such as a living room or dining room with other residents. The New York State Department of Health requires ALRs to help residents live as independently as possible.

The ALR is also required to develop an individualized service plan for each resident upon admission. NY Public Health Law (PHL) §4659. The plan must be developed in consultation with the resident, the resident's family or representative, the ALR operator, and if needed, a home health care agency. The plan must reflect the medical, nutritional, rehabilitation, function, cognitive and other needs of the resident, and must include the services to be provided, and how and by whom the services will be provided. The plan must be reviewed and revised to reflect any changing care needs of the resident, but no less frequently than every six months, and as needed, in consultation with the resident's physician. The law includes a lengthy list of residents' rights that must be given to the resident in writing prior to or at the time of admission. Id. §4660.

There are three types of ALRs: basic, enhanced, and special needs. The basic ALR is as described above. An enhanced ALR is certified by the New York State Department of Health to offer a higher level of care to people with age-related difficulties beyond what a basic ALR can provide. Residents of enhanced ALRs may have difficulty getting out of a chair, walking, or negotiating a staircase; may need assistance with medical equipment;

or may need help managing chronic urinary and/or bowel incontinence. The operator of an enhanced ALR must be able to assure that the medical and nursing needs of its residents can be met. An enhanced ALR can't directly provide physician, nurse or home health care services, but it is responsible for arrang-

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ing for such services if the resident is unable to do so.

A special needs ALR is certified by DOH to serve residents with particular medical problems, such as Alzheimer's Disease or dementia. It must have DOH-approved specialized services, environmental features, and have minimum staffing levels. Its services must be tailored to the individual needs of its residents, and it must develop a specialized plan for dealing with each resident's behavioral changes.

License

The operation of any of these types of ACFs requires an operating certificate from DOH. Application for an operating certificate is via a certificate-of-need (CON) application. The DOH reviews the proposed operator's character, competence and ability to operate the facility in compliance with state law and regulations, financial feasibility, architectural drawings, and so on. Once approved, the ALR is subject to periodic inspection by DOH to determine if it is being operated in a manner that protects the health, safety and well-being of residents.

Continuing Care

Another type of senior housing is the Continuing Care Retirement Community (CCRC). PHL §4600 et seq. These are facilities for adults that offer, under one contract, an independent living unit, such as an apartment or cottage, residential amenities, and access to a continuum of long term care services appropriate to its residents'

changing health and social needs. CCRC residents receive:

- independent housing
- meals
- social activities
- scheduled transportation
- housekeeping and maintenance
- access to physician, prescription drug, and rehabilitation services
- supportive housing and services as provided in an adult home, EHP, or ALR

A variation on the CCRC model is the Fee-for-Service CCRC, which in addition to the services listed above, must offer its residents access to intermediate levels of medical care. The application process for either type of CCRC is a comprehensive and rigorous one. PHL §4655.

Conclusion

These are some of the many types of supportive housing that are available in New York. Together with health care providers like hospitals, nursing homes, and home health care agencies, they form part of the continuum of support and care that are available to people as they get older.

As numerous distinguished bioethicists, theologians, and writers have observed, old age is not an illness, but a normal stage of life.

... [W]e should distinguish aging from disease. Unlike disease, aging is a normal stage of life that seems "built-in." It makes us more vulnerable to disease but is not itself pathology. No one dies because his hair turns gray, and the diseases often associated with old age can occur even apart from aging. Gilbert Meilaender, "Thinking About Aging," *First Things*, April 1, 2011.

As such, we should encourage the development of more facilities where older individuals can live comfortably, and as much as possible, independently, for as long as they are able.

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1. This column is a compendium of information from the website of the New York State Department of Health, as well as from the relevant provisions of the New York Public Health Law, Social Services Law, and Titles 10 and 18 of the New York Code, Rules and Regulations.