

MAKING *AFFORDABLE* ASSISTED LIVING A REALITY

A white paper for state policy
makers

Prepared by:

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Recommendations for Making Affordable Assisted Living a Reality 2008

Introduction

Traditionally, our long term care system has centered on nursing home care. Nursing homes have often been the only option for New Yorkers who cannot live independently. With the advent of assisted living and other congregant care settings, people now have more options. Most consumers prefer to remain at home if possible. Those who cannot live independently generally prefer a less institutional setting than a nursing home. In addition, the Supreme Court ruling in *Olmstead v. L.C.* prohibits states, unless necessary, from institutionalizing individuals eligible for publicly funded programs.

While assisted living provides an attractive option for consumers who desire a more community-like setting, and can have the additional benefit of delaying or even preventing admittance to a nursing home, high private pay rates make it prohibitive for most people. In 2006, the average monthly cost of living in an assisted living facility in New York City was \$3,732; for the rest of New York State it was \$2,680.¹ These averages do not include the cost of medication or other services such as therapy or rehabilitation. Thus, to date, in New York State, assisted living has only been a real option for those with substantial assets, income or other resources to pay such rates.

This white paper presents recommendations for ways New York State can make assisted living accessible to all New Yorkers, regardless of income. It has been developed by the Assisted Living Committee of the Long Term Care Community Coalition (LTCCC). LTCCC, a coalition of over two dozen civic, community and professional groups from across New York State, has worked for over twenty five years to improve long term care in New York. The individuals and organizations who participated in the development of this paper are listed on the last page.

Our Priorities

- Consumers, regardless of income, must have appropriate choices for affordable housing and services.
- Developers must be encouraged and enabled to build and operate affordable assisted living facilities.

¹ Genworth Financial. Genworth Financial 2006 Cost of Care Survey: Nursing homes, assisted living facilities and home care providers. March 2006. Available at: http://www.aahsa.org/advocacy/assisted_living/reports_data/documents/Genworth_cost_study.pdf.

Our Principles

- It is the responsibility of government to ensure that consumers have appropriate options for affordable housing and services and to ensure that developers have the ability to build and operate affordable assisted living facilities by balancing the use of mandates with incentives and subsidies.
- The populations of assisted living facilities must encompass all economic levels. Mixed income housing is more economically feasible and socially desirable.

Background

Affordable assisted living includes both affordable services and affordable housing for those with low and moderate incomes.

Providing Affordable Services

Currently, limited assisted living services in congregate settings for eligible consumers with low-incomes are paid for by Supplemental Security Income (SSI) in those adult homes and enriched housing that accept public funding).² These services amount to about 3.75 hours of personal care a week and do not require nursing home eligibility. Medicaid does not cover such services except in limited circumstances.³

Medicaid provides three options from which states can choose to pay for assisted living for those who are Medicaid eligible:

State Plan Personal Care Services: The State Plan Personal Care Services benefit pays for personal care services (bathing, grooming, meal preparation) for people who need assistance with activities of daily living (ADL) but do not need nursing home care. Most people who are using this benefit at this time are receiving the services in their own homes. Some residents of adult homes and enriched housing are also using this benefit. This is the most inclusive option because the state must provide the benefit to all individuals who meet the financial requirements. In order to be Medicaid eligible, a consumer must be eligible for Supplemental Security Income (SSI) (within SSI income and resource levels), or if his income or resources are higher than permitted, he must “spend down” or incur medical expenses in order to qualify. Significantly, for the latter group there exists the option to use pooled-income trusts and the option to exercise the right of spousal refusal.

² In New York’s adult homes and enriched housing programs, daily rate to providers after distribution of a portion of SSI to the resident in the form of a personal allowance is now about \$36 a day (DOH, Office of Long Term Care, staff interview, January, 2008).

³ ALP– assisted living program – services are paid for by Medicaid, but it is a limited program for which only nursing home eligible residents are eligible . This paper will not be discussing the ALP, which we hope will be phased out when assisted living regulations are implemented and a source of public funding is found for Medicaid eligible individuals beyond those who are identified as eligible for nursing home care.

1915(c) HCBS Waiver: The Home and Community Based Services (HCBS) Waiver is another option. It has the advantage of permitting states more flexibility to cover certain services not ordinarily covered under Medicaid (under option one above) and it allows states to expand the Medicaid eligibility requirements to 300% of the eligible income for SSI (\$1,809 per month in 2006).⁴ However, this option requires nursing home eligibility for an individual to qualify for benefits and it requires the state to ensure budget neutrality - state costs may not exceed what would have been spent in an institution. Thus, the waiver not only gives the states an incentive to limit the number of people accessing this benefit, but also gives the state the authority to do so. One possible result are waiting lists that limit the number of eligible people who receive benefits and limit the amount of money spent on the program.

1915(i) Optional HCBS Benefit: The 1915(i) HCBS benefit is similar to the 1915(c) HCBS waiver with a few differences: (1) it allows states to offer many of the services in the HCBS waiver without the paperwork required of waiver programs (applications and renewals); (2) it does not require budget neutrality; (3) it does not require nursing home eligibility for an individual to qualify for services; and (4) it can benefit consumers' with income up to 150% of the federal poverty level (\$1,225 per month in 2006). Although this option does not require budget neutrality, states are permitted to target groups in certain geographic areas. Thus, some individuals eligible for Medicaid may be excluded.

A significant problem with each of these options is that they do not provide *spousal impoverishment protections* which would allow the spouse not needing services to retain a larger portion of monthly income.⁵ This is because the “sick” spouse is not being admitted to a nursing home under these scenarios. Without this protection, consumers may be forced to enter a nursing home to keep their well spouse financially secure. Thus, the promise of assisted living – the ability to remain in place if one becomes more dependent – will be lost and the state will probably end up spending more Medicaid funds to keep the “sick” spouse in a less desirable setting.

Those with moderate incomes may be in an even worse predicament because, while many cannot afford to pay the high monthly rates for assisted living, they do not qualify for financial assistance. Thus they may be forced to enter a nursing home prematurely and quickly exhaust their resources because of the high cost of nursing home care. After exhausting their personal resources in the nursing home, the state will likely end up being responsible for covering the cost of their care.

⁴ Congressional Research Service. Medicaid's Home and Community-Based Services State Plan Option: Section 6086 of the Deficit Reduction Act of 2005. 2006 May. Available at: <http://www.ndrn.org/policy/DRA/CRS%20report%20HCBS%20Option.pdf>.

⁵ With the first option, the personal care benefit of the State Plan, a well spouse does have the option of signing a “spousal refusal” letter, stating that he or she will not be contributing to the care of the sick spouse. Although this may permit the sick spouse to be eligible for Medicaid, the well spouse does retain liability. The State may pursue him for support or go pursue his estate.

Providing Affordable Housing

Because housing makes up a substantial portion of the total cost of living in an assisted living facility, land and development costs have a considerable impact on affordability. It is difficult for developers to find affordable land upon which to build or convert existing buildings to affordable assisted living facilities. When developers pay premium prices for land, the cost is passed on to the consumer. Although many government agencies and private foundations hope to alleviate the situation by providing incentives such as loans or subsidies, the funds are fragmented and difficult to access.

Consumers with low incomes generally⁶ have two options to pay for the housing cost of assisted living: Housing Choice Vouchers (HCVs or officially, Section 8) or Supplemental Security Income (SSI). HCVs enable poor, disabled or elderly tenants to receive rent vouchers from a local housing agency and redeem them with participating private landlords. Tenants pay 30 percent of their income in rent, while the vouchers pay the balance, up to a limit set by the federal government, subject to local market conditions. However, many assisted living facilities will not accept HCVs (or SSI). Another hurdle to the widespread use of these funds is a change in federal government policy. In the past, the federal housing department provided agencies with financing based on actual costs. But last year the Bush administration, concerned about the rising costs of Section 8, began to reduce the flexibility in the program and move toward fixed costs.⁷

There are three primary challenges for developers who want to develop an affordable assisted living project for low and moderate income individuals:

- **Real estate development is costly.** Land, mortgages, construction, and labor are some of the expenses that must be considered in the cost of developing an assisted living facility. In order to finance an affordable assisted living facility that will remain affordable for the long term (beyond 10 years), developers need assistance with reducing the cost of each of these items.
- **Lengthy government approval processes are expensive.** Lengthy processing times to obtain government approval can lead to delays in construction and lost revenue which increases the overall cost of developing an assisted living facility.
- **Financing can be complex and difficult to procure.** Sorting out the financial risk and complexity of developing and maintaining an affordable assisted living facility can be a daunting challenge. Even though there are incentives such as mortgage protections, loans, grants, tax incentives and subsidies, the

⁶ Income and other criteria may vary depending upon program.

⁷Chen, David W, "\$61 Million Shortfall Seen in HUD Voucher Money," *New York Times*, January 19, 2005.

process of identifying and applying for incentives is cumbersome. In addition, because each incentive is relatively small, developers often need multiple incentives to finance one affordable assisted living facility.

RECOMMENDATIONS FOR MAKING AFFORDABLE ASSISTED LIVING A REALITY

LTCCC's Assisted Living Committee reviewed literature, listened to experts, and interviewed developers and relevant staff from government agencies to develop these recommendations for New York State policy makers. The recommendations were carefully planned to complement and build upon one another. They seek to achieve affordability by linking government mandates with incentives. Incentives must be in place to make mandates economically feasible, while incentives without mandates will not result in the desired outcome for consumers.

A. Recommendations for Providing Affordable Services in Assisted Living

1. Utilize the State Plan Personal Care Services Benefit option to guarantee services for all Medicaid eligible individuals and:

- a. Have Medicaid pay for all personal care services in the assisted living residence;
- b. Require providers to use the SSI funds usually used for personal assistance only for other direct resident services;
- c. Closely track the utilization of this benefit in assisted living – keeping track of how many people are receiving benefits and how providers are using the Medicaid funds;⁸ and
- d. Publish an annual report on this tracking, made available to the public via the Department of Health's website.

Even though using the state plan personal care services benefit limits coverage to people with income at or below 100% of income eligibility for SSI, it does require the State to cover all of these individuals who need this level of care rather than permitting the State to limit the number of qualified people it covers as is possible under the other two options. Additionally, if this option is supplemented with our sliding scale payment fees recommendation (see below) those who do not meet the SSI income requirement will also be helped.

⁸ A recent report from the Commission on Quality Care⁸ on the ALP (Assisted Living Program) has indicated that some adult homes spent only one-half of their Medicaid reimbursement on care; some Medicaid payment levels were inflated; and there were substantive disparities between level of need ratings and plans of care and between plans of care and actual services provided, indicates the need for the state to carefully monitor the use of the funds.

Although the Personal Care Services Benefit option has the possibility of increasing the number of people who will access this benefit, it also has the potential of saving the state Medicaid money that would have been spent on nursing home care. Without this option, many people might be forced to go to a nursing home because they could not afford assisted living. Daily Medicaid nursing home rates average \$160-175 upstate and \$200-245 in the New York City area.⁹ These rates are significantly higher than the Medicaid rates for personal care.

Additionally, we suggest that Medicaid cover all of the personal care needs of individuals in assisted living. Providers should no longer be expected to cover about 3.75 hours of personal care assistance a week for the SSI payment. SSI should cover everything except personal care. Providers have long complained that SSI does not permit them to adequately provide for their residents. The extra SSI funds should help. It is crucial that providers be required to use the funds that would have been used to provide the 3.75 hours of personal assistance only for other direct care services. We believe this has a number of advantages for both the state and assisted living provider:

- Although the state will have to spend more Medicaid funds if Medicaid covers some of what SSI now covers, we believe that it will save the state money in the long run by alleviating the need to monitor providers to make sure that they are not receiving two reimbursements for the same service. We urge the state to calculate how much about 3.75 hours of personal care assistance for each of these residents would cost under Medicaid to see if this is a feasible suggestion;
- It was always difficult, if not impossible, for the state to monitor the amount of personal care given by adult homes, enriched housing and assisted living since there was no specific requirement for any number of hours of personal care for SSI reimbursement. Under this recommendation, it will not have to try;
- It would be easier to monitor the use of the Medicaid funds since only home care agencies would be receiving Medicaid reimbursement;¹⁰ and
- By having Medicaid pay for all the personal care needs of the resident, the residence will be able to receive the full SSI payment without having to provide such care out of these SSI funds, and thus will have added funds to provide other direct resident care program services.

2. Mandate sliding scale fees for any facility that accesses Medicaid or SSI or is built or converted using any government financial assistance.

This would need to be coupled with incentives/subsidies (see recommendations for housing below). Sliding scale fees would make the assisted living facility accessible to consumers with varying levels of income.

⁹ Data from the Department of Health, Bureau of Long Term Care Reimbursement

¹⁰ Of course, assisted living providers who own home care agencies would receive the funds.

B. Recommendations for Providing Affordable Housing in Assisted Living

1. Include financing options for assisted living in the single point of entry system for consumers.

As the state implements the first phase of its single point of entry, NYConnects, it must include educational information and technical help for consumers to help them access financial resources and options for affordable assisted living services and housing.

2. Advocate for increased funding for Section 8 Housing Choice Vouchers (HCVs).

The number of HCVs available depends on funding. These vouchers are funded by federal monies and are given to regional offices across the state. However, the state could advocate with the federal government for increased funding and work with the regional offices to make HCVs available to consumers who need to use them to pay for assisted living.

3. Establish a single point of entry system for developers of affordable assisted living at a single, central location.

Currently, resources for developers are scattered, resulting in unnecessary challenges and missed opportunities to facilitate the development of affordable assisted living. New York should establish a clearinghouse or “one stop shop” resource that would coordinate all information, loans and subsidies; bring together private and public donors as well as not-for-profit and for-profit developers; and provide a listing of all funding resources for assisted living.

4. Advocate for blended federal, state and city funding streams.

State and federal funding for housing programs should be combined when appropriate in order to consolidate the number of programs and give the state more control over budgeting. Giving the state the authority to merge funds for different programs will allow the state to use the funds in ways that are appropriate for its consumers and will be more helpful to developers.

5. Urge municipalities to become partners with affordable assisted living developers.

Municipalities often have access to land, such as school properties or government buildings that are not being used or are under-utilized. They should be encouraged too make such property available to developers of affordable assisted living facilities for free or at a low cost.

6. Increase subsidies/tax incentives for developers.

Developers of affordable assisted living facilities should be given more incentives because they are responsible for providing services in addition to housing. Increased subsidies/tax incentives should be offered to developers who are willing to allocate more than the currently required number of units for residents with low-incomes and to developers who are willing to maintain the affordability of units beyond the required amount of time (now 20 percent and 10 years, respectively, for the Low Income Housing Tax Credit). Developers who take such measures need better tax incentives and/or subsidies to make the project financially feasible. When agencies or programs are only able to give limited incentives according to established guidelines, additional incentives, such as subsidies from other programs or funds, should be offered to developers who allocate more units for low income residents or maintain affordability beyond the required amount of time.

In addition to sustaining the number of low-income housing units, increases in the percentage allocated for low-income units will increase the number of mixed income housing. The government should support efforts that will establish mixed-income housing as the standard for affordable assisted living.

7. Create a “true” State housing trust fund that has a dedicated revenue stream and encourage the use of trust funds for affordable assisted living.

The current State Housing Trust Fund Program is insufficient. It lacks a dedicated stream of funding which means that appropriations are argued every year and ongoing funding levels are never assured. The trust fund needs a dedicated revenue stream to ensure the sustainability of the program.¹¹ By guaranteeing an increased source of state resources, dedicated to affordable housing, a more vibrant Housing Trust Fund would not only lead to the production and preservation of more affordable housing, it would also enable developers to better plan developments with the knowledge that sufficient state resources would be available in the future.¹² The state should work with developers of affordable assisted living to access such funds.

8. Allocate a portion of governor’s new Housing Opportunity Fund for assisted living.

This year Governor Spitzer has introduced a new Housing Opportunity Fund, targeting \$400 million to support affordable and supportive housing across the state. A portion of these funds should be used for affordable assisted living. While a dedicated revenue stream is still the final goal, funds from the Housing Opportunity Fund would provide a good start towards affordable housing in assisted living.

9. Shorten the amount of time it takes to process requests.

¹¹ Housing First! advocates for the “True Housing Trust Fund” in their white paper for affordable housing. <http://www.habitatnyc.org/pdf/WPState.pdf>

¹² New York State Association of Affordable Housing, Testimony at the State Senate Public Forum On Creating And Implementing A True New York State Housing Trust Fund, May, 30, 2007, Albany, NY.

The New York State Housing Finance Agency has streamlined their application by removing unnecessary paperwork.¹³ Other agencies should likewise reassess their application and approval processes and streamline them to ensure that projects are completed on time.

10. Housing agencies should allot more points in their QAPs (Housing Credit Qualified Application Plan) for developers wanting to build affordable assisted living facilities.

Allotting more points in the QAP, the plan used for deciding incentives/subsidies, effectively gives developers of affordable assisted living priority in the application process for incentive programs. Developers may be more willing to build an affordable assisted living facility if they know they have a better chance of getting government incentives.

11. Establish and enforce regulations for quality of care and life for providers receiving Medicaid funds.

We strongly encourage the government to publish and enforce the assisted living regulations and continue to consider stricter regulations, particularly related to staffing and training. Above all, we must ensure that the nursing home and adult home scandals are not repeated under New York's new assisted living law and regulatory system. Medicaid reimbursement should not go into residences or facilities that do not meet certain criteria. The state should establish the following mandates:

- Facilities may not discriminate on admission or during an individual's residency on the basis of source of payment, disability, race, religion or sexual orientation;
- Residents in a certified enhanced assisted living residence who need enhanced care must not be moved from their rooms unless necessary to better accommodate their needs, which must be documented;
- Low income residents may not be separated from other residents.
- Facilities may not discriminate on the basis of source of payment for available single rooms and baths;
- Facilities must provide a wide range of resident choice and support in maintenance of connections and involvement with the community.
- Facilities must provide a home-like setting and encourage resident autonomy;
- Facilities or home care agencies must deliver care in a culturally competent manner; and
- Only licensed facilities that meet these mandates can receive government incentives or payments.

12. Consider mandating that any licensed facility that accesses Medicaid or SSI or is built or converted using any government financial assistance cannot discriminate against consumers using HCVs as unnecessary paperwork is eliminated.

¹³ Interview with agency president and CEO, October, 2007.

Many landlords say they will not accept HCVs because of the burden of paperwork. The government must intervene to ensure that tenants with low-incomes will be able to access affordable housing by mandating that landlords who receive Medicaid, SSI or any government financial assistance or incentives, be required to accept HCVs. Unlike many cities, including Chicago and Washington, New York City has never had a law prohibiting discrimination against voucher holders.¹⁴ New York City Councilman William De Blasio has recently introduced a bill in the city council which would bar landlords from discriminating against potential tenants who receive government rent subsidies. We urge the state to review this bill, as well as the anti-discrimination rules in those cities and states that have them, for a possible blueprint for a statewide law and consider ways to eliminate unnecessary paperwork.

13. Mandate sliding scale fees for housing for any licensed facility that accesses Medicaid or SSI or is built or converted using any government financial assistance or incentives.

Implementing a sliding scale fee promotes the creation of mixed-income assisted living facilities while having a minimum impact on profits.

Conclusion

Consumers, developers and government must work together to ensure that assisted living is made affordable for all. Following is a summary of our recommendations on how to accomplish this.

Summary of Recommendations

Providing Affordable Assisted Living Services

- Utilize the State Plan Personal Care Services Benefit option to guarantee services for all Medicaid eligible individuals and have Medicaid pay for all personal care services in the assisted living residence; and
- Mandate sliding scale fees for any facility that accesses Medicaid or SSI or is built or converted using any government financial assistance.

Providing Affordable Assisted Living Housing

Supporting Consumer Access

- **Include financing options for assisted living in the single point of entry system for consumers; and**
- **Advocate for increased funding for Section 8 Housing Choice Vouchers (HCVs).**

¹⁴ New York Times, October 30, 2007.

Supporting Developers and Providers

- Establish a single point of entry for developers of affordable assisted living.
- Advocate for blended federal, state and city funding streams;
- Urge municipalities to become partners with affordable assisted living developers;
- Increase subsidies/tax incentives for developers;
- Create a “true” state housing trust fund that has a dedicated revenue stream and encourage the use of trust funds for affordable assisted living;
- Allocate a portion of the governor’s new Housing Opportunity Fund for assisted living.
- Shorten the amount of time it takes to process requests; and
- Ask housing agencies to allot more points in their QAPs (Housing Credit Qualified Application Plan) for developers wanting to build affordable assisted living facilities.

Advance Supportive Government Policies

- Establish and enforce regulations for quality of care and life;
- Consider mandating that any licensed facility that accesses Medicaid or SSI or is built or converted using any government financial assistance cannot discriminate against consumers using HCVs as unnecessary paperwork is eliminated; and
- Mandate sliding scale fees for housing for any licensed facility that accesses Medicaid or SSI or is built or converted using any government financial assistance or incentives.

LTCCC Assisted Living Committee Participants

Alzheimer’s Association, New York City Chapter
Brooklyn-wide Interagency Council of the Aging
Coalition of Institutionalized Aged and Disabled (CIAD)
Friends and Relatives of Institutionalized Aged (FRIA)
LTC Ombudsman Program of Suffolk County
New York State Nurses Association (NYSNA)
Women’s City Club of New York (WCCNY)

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