



NCAL’s Guiding Principles for Providing Information to Consumers

Introduction

The National Center for Assisted Living (NCAL) has long been committed to professional and ethical conduct in all advertising, sales, and marketing activities. NCAL developed this *Guiding Principles for Providing Information to Consumers* document to articulate more fully the organization’s commitment to ethical marketing practices and full disclosure of information to prospective and current assisted living residents and their families or responsible parties.

About one million people live in assisted living communities across the nation. Assisted living embraces a philosophy of person-centered care while providing assistance with physical activities and health-related needs. Assisted living communities also strive to meet the social, emotional, cultural, intellectual, and spiritual well being of residents.

The assisted living profession continues to grow and evolve as does NCAL’s perspectives on our changing profession. The concepts and terms used in this document may vary from state to state and are provided as a framework to help promote a general understanding of consumer information disclosure in the assisted living context. The guiding principles and content in this document are not “standards of care.”

NCAL’s philosophy supports the belief that residents have the right to be fully informed about fees, policies, services, and occupancy and move-out criteria of an assisted living community (ALC)*. In addition, an ALC’s written and verbal marketing communications should be consistent with the ALC’s contract or resident agreement and policies, as well as the laws, rules, and regulations governing the ALC’s operations. An ALC’s written and verbal communications should not differ from the actual services provided or available to a resident. Providers should not engage in any false or misleading advertising and sales practices that are intentionally designed to deceive or manipulate consumers.

* Assisted Living Community (ALC) is used in this document as a way to encompass the various terms identifying assisted living facilities.

During the past 20 years, assisted living has evolved into a multi-faceted profession that provides various services and care. This dynamic growth and variety of services, coupled with the growing diversity of long term care services in our country, make it important for providers to present their prospective customers and current residents with information that is as complete, concise, and candid about their communities and the services provided as possible. The general statements below describe aspects of how providers can disclose important information to their customers.

Contracts

Service agreements, which can also be called contracts, are the primary tool providers use to explain the legal responsibilities of both the provider and the resident. Since contracts by their very nature can contain confusing or imprecise terms, NCAL believes the following suggestions can facilitate a consumer's understanding of the ALC's contract document and help during the ALC's process of completing a contract:

- Contract language should be consistent with the ALC's marketing materials and information conveyed to prospective residents or interested parties. Marketing information consists of marketing materials, sales presentations, company Web sites, tours, verbal information, or any other materials portraying the community's services and policies.
- Contract provisions and any modifications should be consistent with applicable laws.
- NCAL believes that modifications can be made to the contract as long as all parties agree and signify their agreement to modifications in the contract.
- Contracts should be written in simple language when possible. Providers may offer one of their representatives to read and explain the contract to a prospective resident or third party and answer any questions prior to the execution of the contract.
- Prior to signing the contract, providers should explain to prospective residents their right to review a contract and or have the contract reviewed by a third party.
- If a third party signs the contract, the contract should include an explanation about the third party's financial role as being responsible for charges, costs, or fees incurred by the resident.
- Contracts should include the ALC's policies concerning acceptance of public benefits and whether the resident has continued occupancy when private funds have been exhausted. The ALC should inform the resident about or refer the resident to sources of information about Medicaid and other benefits before initiating the move-out procedures. In addition, contracts should explain the resident's responsibility to notify the ALC well before the resident's personal funds expire (e.g., 120 days) so that the ALC can provide timely information to residents and help them make a transition.
- Contracts should discuss rights, options, and limitations concerning the resident's ability to obtain services outside the ALC.

Finances

Disclosing and reviewing a variety of financial topics can help establish an understanding for the prospective or current resident or responsible parties. Explaining an ALC's policies regarding fees, deposits, public financing, and management of resident funds in a clear and concise manner helps consumers understand how to finance their care and services.

Fee Increases

When an ALC increases the amount of the basic fees or fee schedules, the ALC should give residents and families a written notice per state requirements. The notice of fee increases should be issued at least 30 days in advance of the date the fee is set to increase. In addition, the ALC should disclose its policies for modifying fees due to changes in a resident's needs, which may be reflected in the service plan.

Refundable or Non-Refundable Fees

The ALC should disclose its policies on all refundable or non-refundable fees. These policies should also be included in the ALC's contract. In cases of resident death, refundable fees should be refunded, and advance notice requirements regarding moving out should not apply in order to be eligible for refunds.

Management of Resident Finances

In general, it is not recommended that an ALC's operator or employees serve as a resident's guardian, attorney-in-fact, or power of attorney for health care. The provider should check applicable state laws. In those rare instances when a resident may designate the ALC to handle finances, an ALC staff person may manage the resident's funds but only with the resident's written authorization that is witnessed by a person who has no affiliation with the community, its management, or employees. After being properly designated, the ALC has a fiduciary responsibility to the resident for management of the resident's money. Some residents prefer to designate facility staff as the representative payee for Social Security benefits.

Public Financing Options

A staff member typically explains the ALC's policies regarding public benefits, such as Medicaid or other publicly funded programs prior to a resident signing the contract. In instances when a resident informs an ALC that his or her personal funds will be exhausted, the ALC may want to inform the resident or refer the resident to sources of information about Medicaid and other benefits. In those instances when the ALC does not participate in a public financing program or such financing is not available, the ALC should explain the move-out process before the resident's private funds have been exhausted.

In addition, many ALCs include these policies and procedures in their contracts. [See *Contracts* section.]

Resident Transfer or Move-Out

ALCs may be required to transfer or move-out a resident as required by law, regulation, or ALC policy due to a resident's non-emergency medical condition. In non-emergency situations requiring an ALC to either transfer or move out a resident, ALCs should provide written notice of such intent to the resident, family, or responsible party at least 30 days prior to the transfer or move-out or according to state regulations. Providing this notice in a format that is readable and in a language that the resident and family or responsible party can understand is helpful.

The notice should include the following items:

- Effective date of the transfer or move-out.
- Reason(s) for transfer or move-out, including facts and circumstances on which the decision is based.
- Resident's right to appeal the decision.
- Information on where to appeal and time frame for filing appeal.
- Contact information for the Long Term Care Ombudsman Program.
- Resident's right to represent himself/herself or to be represented by legal counsel, a relative, friend, or other spokesperson.

Emergency Transfer or Move-out

In instances of resident medical emergencies, no written notice is required prior to a transfer or move-out; however, a community staff member should provide verbal notice to family members or other individuals designated by the resident. This notice should be given to the individual or family member as soon as is practical under the circumstances. Residents may decide which family members may be notified or may elect not to notify their family.

Room/Unit Hold Policies

ALCs should disclose their room or unit hold policies during resident absences and should support the resident's right to hold the unit as long as fees are paid or as long as state regulation permits.

Appeal of Transfer or Move-out

As determined by the state, residents may have a right to appeal an involuntary transfer or move-out decision to the state licensing or other appropriate agency. NCAL recommends that states consider designating an agency or agencies for hearing such appeals, and develop processes that are expeditious, impartial, and staffed by qualified personnel. These processes should provide for an in-person hearing accessible to the resident. The state should preserve the resident's and the ALC's right to present evidence and arguments and to refute evidence and arguments presented by other parties.

An ALC may have developed internal procedures regarding how a resident can appeal a decision and residents can follow those procedures to appeal the decision to the ALC.

Residents should not be required to exhaust internal procedures before appealing the ALC's decision to the state.

In states without appeals systems, it is recommended that ALCs create an appeal process that utilizes neutral outside mediation.

Special Care And End-Of-Life Care

Many ALCs provide specialized care to serve residents with Alzheimer's disease or other illnesses. In addition, the need for end-of-life care can pose special challenges. In either case, it is important for consumers to understand what services will be offered, by whom, and the fees for those services when extra care is needed. The ALC should coordinate services with outside service providers.

Special Care Provisions

ALCs offering specialized care services for people with Alzheimer's disease, other forms of dementia, or specific health conditions should explain to prospective residents and their families how the ALC's special care program and its services are different from the residence's basic services. There may be state specific regulations on dementia care.

Pre-Admission Disclosure on Advance Directives

ALCs should provide residents with information about their rights under state law to make decisions about medical care, including their right to accept or refuse health-related services, the right to formulate advance medical directives, such as a living will, and a directive to physicians or durable power of attorney for health care.

In addition, ALCs should disclose their philosophy and policies about implementation of advance medical directives, including, but not limited to, implementation of do-not-resuscitate orders and medical directives that require limitations on delivery of medical services, food, or hydration, and situations in which the community is required to summon emergency medical services. This helps to ensure that both the resident and ALC agree on how to proceed.

Pre-Admission Disclosure on End-of-Life Care

Increasingly, end-of-life care is being offered in the assisted living setting. ALCs should disclose information to residents about applicable state laws and about the ALC's philosophy and policies regarding delivery of end-of-life care, including delivery of hospice and palliative care services. The ALC disclosure should indicate general circumstances, if any, under which a resident with terminal illness or in the process of dying may be required to leave as well as the resident's right to refuse the ALC's offer to provide end-of-life care.

Public Posting Of State Contact And Other Information

ALCs should post up-to-date contact information for appropriate and related state agencies and offices. The list should include:

- State or local long term care ombudsman's office;

- State regulatory agency that licenses or certifies ALCs; and
- Other advocacy bodies or government agencies mandated to be posted.

The contact information document format should be easy to read. The contact information should be posted in a public location within the ALC. Many ALCs offer the identical material prepared in a printed format so that residents who request the information can obtain a copy from the ALC for their own personal use. ALCs may also attach the material to the contract.

As approved by the NCAL Board of Directors on January 18, 2008.