

Assisted Living Group To Study Enforcement Strategies

SENATE AGING COMMITTEE SEEKS SECTOR INPUT

The Senate Special Committee on Aging recently pushed an assisted living stakeholders coalition to develop ways to hold substandard facilities accountable or else face the possibility of Congress developing federal regulations for them—a proposition opposed by many providers. The Assisted Living Workgroup (ALW) was formed last fall to create methods of ensuring quality in assisted living.

While complimenting the ALW members for their progress, Special Committee Chairman Sen. John Breaux (D-La.) pressed the ALW to develop an enforcement element to uphold the standards the group is formulating.

“If you do not come up with a plan, then Congress will come up with it,” Breaux said at a recent forum about how the ALW would enforce standards.

“Then you’ll be in a situation where you have [the federal government] micro-managing the industry, and I don’t think you want that.”

Breaux’s fellow committee member Sen. Ron Wyden (D-Ore.) concurred. “You can have standards, but unless you have stan-

dards with enforcement then it is not on the level.”

The National Center for Assisted Living (NCAL) and other assisted living provider organizations do not support federal regulation because the profession is already regulated on the state level. There is concern that federal regulation would take the focus off of resident care and onto filling out required paperwork. The organizations also want to avoid creating a punitive system similar to the federal regulatory system governing skilled nursing facilities (SNFs).

NCAL Vice President Dave Kylo suggested that the government has the opportunity to take on more of a consulting role with assisted living providers, rather than just the adversarial role surveyors play in the SNF arena.

Such a cooperative system currently operates in Washington, where state employees are set up as consultants to help facilities with problems meet state standards while a separate group of state employees conducts inspections.

Breaux said he wants to avoid creating a regulatory system similar to skilled nursing, but remained firm about holding “bad” facilities accountable.

Breaux asked if the ALW final recommendations, due next April, would include

staff-to-patient ratios, mandatory staff qualifications, and making available an explanation of facility fees and discharge policies and information about a facility’s financial viability. ALW group members agreed that all of those issues were being discussed but nothing had been finalized.

The ALW was formed last fall upon the urging of Sens. Breaux, former committee Chair Larry Craig (R-Idaho), and Wyden after the Special Committee held an April 2001 hearing examining the lack of standardization and regulation in assisted living.

The hearing last year was held shortly after *The New York Times*, *The Washington Post*, and the *Wall Street Journal* published stories about problems in assisted living and highlighted some resident deaths that had occurred.

At this year’s forum, Breaux urged the group not to squander its opportunity to develop its own blueprint for potential federal regulation.

“The idea was to try to get all the sides to listen to each other in order to come up with something that is workable,” said Breaux.

“Hopefully, the package of recommendations will be helpful to Congress and helpful ultimately to the consumers.”

—Lisa Gelhaus

HUD Re-evaluating Long Term Care Underwriting Policies

RECORD DEFAULTS IN LOANS SPUR ACTION

The Department of Housing and Urban Development (HUD) is considering changes to its underwriting policies of federally insured Section 232 loans after developers of skilled nursing and assisted living projects began defaulting on the loans at record rates.

Defaults in loans used for skilled nursing projects spiked to a high in 2001, with nearly \$174 million in HUD-insured mortgages in default. The rapid increase in skilled nursing defaults started in 2000, with slightly more than \$58 million in loans in default. In 1999 only five mortgagees had defaulted on HUD 232-insured loans, worth a total of nearly \$16 million. The default rate for 2002 in skilled nursing mortgages has already climbed to \$45 million.

HUD's Section 232 established a program that allows developers of health care

projects to obtain government-insured mortgages, an option often used by developers that have been shut out by private lenders. The government insurance entices private banks to join with HUD in financing these projects.

Under Section 232, the Federal Housing Administration (FHA) provides the mortgage insurance for the projects. Operating similarly to private mortgage insurance (PMI) on a single-family home, the FHA mortgage insurance covers the bank if borrowers default. FHA pays the bank that lent the money, and in almost all instances, FHA assumes ownership of the mortgage. As mortgagee, FHA can institute foreclosure proceedings and acquire the property for sale. Essentially, the defaulted Section 232 loans are paid out of HUD's budget.

The factors that made the HUD loans popular to developers are often the same ones that led to the defaults. HUD officials say low Medicaid rates, high insurance premiums, and bankruptcies caused the skilled

nursing defaults, while inexperienced management, slow fill-up rates, and poor marketing led to defaults in the assisted living sector.

HUD separates the assisted living defaults into two categories: board and care and assisted living.

So far this year, 10 mortgages for assisted living projects worth about \$65 million are already in default. In 2001, six projects worth more than \$27.6 million were in default, an increase over the combined default total of \$18.5 million in 1999 and 2000.

HUD is currently working with representatives of Section 232 stakeholders through a separate and independent workgroup that includes the American Health Care Association and the National Center for Assisted Living. The group is seeking ways to reduce loan defaults by further changing the policies governing the HUD underwriting process.

—Lisa Gelhaus