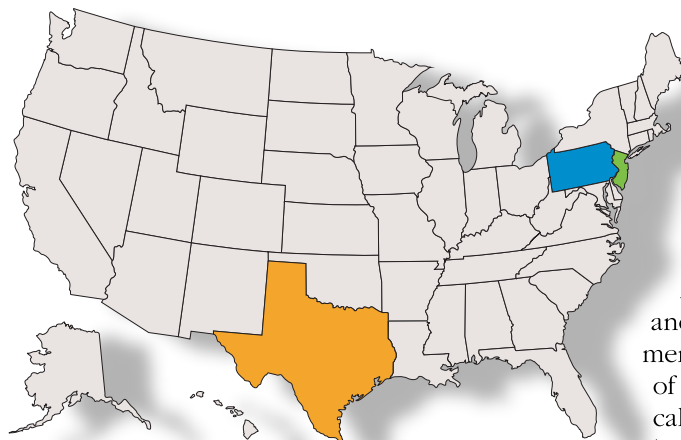




Legal Update in NJ, PA, and TX...and Beyond

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This month's legal column discusses new legislation that impacts assisted living (AL) facilities and administrators in 3 states. Your state could face the same changes soon. In this column, we will continue to update legislation across the nation as it becomes available and newsworthy. But stay tuned for our regular *Legal Corner* articles as well.



New Jersey

In April 2007, Governor Jon Corzine signed legislation that requires the Department of Health and Senior Services to place vital information regarding the ownership and control of long-term care (LTC) facilities on its Web site. This will enable potential residents and their families to make more informed decisions when choosing a facility. According to this statute, all facilities must report the following information¹:

- The name of the owner of a facility as listed on the facility's license
- The name of each person who holds at least a 10% interest in the facility, if there is more than one owner or if the owner is a corporation
- The name of any other licensed LTC facility in the state owned by the same owner or corporation and each person who holds at least a 10% interest in the facility
- The address and contact information of the facility

In addition, this legislation requires the Department of Health and Senior Services to post information regarding regulatory or legal violations and provide a link to the New Jersey Report Card for Nursing Homes and the Medicare Nursing Home Compare database, maintained by the federal Centers for Medicare and Medicaid Services.

Pennsylvania

Pennsylvania's state Senate recently passed legislation in an effort to overhaul and improve the state's oversight over the 1600 "personal care homes" currently lo-

cated in the Commonwealth.² This legislation will now be presented to Governor Edward G. Rendell for his consideration. Currently, these personal care homes, which are Pennsylvania's version of AL facilities, are licensed and inspected by the Department of Public Welfare. Critics of the current system have called for increased state regulation with clear definitions of

the level of care at each facility.

This legislation would create a new licensing category, encompassing homes that provide a level of care between those that offer nonmedical support services and those that operate as skilled nursing facilities (SNFs). According to Pennsylvania Health Care Association President Stuart Shapiro, while facilities that do not offer medical services should remain a viable option for certain residents, "...we need something between that and a nursing home that's also well-regulated, that allows people who need some healthcare services, but not 24/7, like in a nursing home."³ The Commonwealth will also request federal approval to use Medicaid funding to support residents of these facilities.

This legislation represents a serious investment of Pennsylvania's resources and attention, which will be used to take a closer and more comprehensive look at the needs of the thousands of residents who are currently receiving care that may not be commensurate with their needs or expectations. This issue has received considerable attention in the media in recent months, including a now-infamous series in the *Inquirer* titled "Shame of the State." Sue Walther, executive director of the Mental Health Association of Pennsylvania and chairwoman of a state coalition of personal-care homes really is the shame of the state."⁴

Officials have acknowledged that even though legislation was put into place in 2005 that attempted to improve care, those regulations were not sufficiently comprehensive or well-funded to affect real change. In fact, Department of Public Welfare Secretary Estelle Richman acknowledged that the Department could not keep up with inspection requirements while regulating

ALFA Organizes Medicare Part D Congressional Visits

The Assisted Living Federation of America (ALFA) is organizing meetings between assisted living (AL) providers and Congressional leaders this summer to discuss the financial burden of supporting AL residents who are dual-eligible (Medicare & Medicaid) participants in the Medicare Part D prescription drug programs.

Under the Medicare Part D prescription plan, dual-eligible AL residents must pay drug copayments that they previously did not pay. Many are unable to afford the copays and are forced to move to higher-cost settings such as nursing homes where they are exempt from copays. Many AL providers have been providing personal funding for their residents, but

cannot do so indefinitely.

ALFA has scheduled visits by AL providers from affected states with their Congressional representatives to discuss the issue.

Providers will also discuss the cost disparity between care provided in AL communities versus other settings and the potentially significant increases in care costs that will result if AL residents must move to higher-care settings simply to afford their medications.

ALFA's efforts are to support passage of S.1107, the Home and Community-based Services Co-payment Equity Act of 2007, that was introduced in the US Senate earlier this year. This bipartisan legislation, sponsored by Sens. Gordon Smith (R-OR), Bill Nelson (D-FL), Jeff

Bingaman (D-NM), Barbara Boxer (D-CA), Hillary Clinton (D-NY), Susan Collins (R-ME), John Kerry (D-MA), and Blanche Lincoln (D-AR), would eliminate copayments for dual-eligible beneficiaries in AL communities and other home and community-based settings.

ALFA President & CEO Richard P. Grimes stated, "The generosity of assisted living providers and others who continue to pay for Medicare Part D prescription drug copayments for their residents cannot be sustained on a permanent basis. It is therefore critical that this legislation be passed as quickly as possible."¹

Reference

1. Call to action: help eliminate Medicare part D co-payments for dual-eligible AL residents. *Medical News Today*. April 20, 2007.

under-performing homes.³ With this newly pending legislation, Pennsylvania hopes to correct these inadequacies while providing care that meets the needs of individual residents for whom skilled nursing is not an option.

The passage of this legislation by the Senate has also been applauded by the AARP. Pennsylvania State Director, Dick Chevrefils stated that "[a]ccording to an AARP study, 95% of older Pennsylvanians prefer alternatives to nursing home placements." Because of this preference, "Pennsylvanians deserve to have assisted living officially added to the list of long-term care services available in the Commonwealth," he said. "We're pleased our leaders approved a law that provides consumer-directed care, allows independence, and permits individuals to remain in assisted living residences as their health changes."²

Texas

The Texas House of Representatives has introduced House Bill 2474, which states that an AL facility that accepts a resident who is enrolled in the Medicaid community-based alternatives program may not transfer or discharge that resident on the basis of the facility's voluntary withdrawal from the program. This prohibition exists if the resident resides at the facility on the day before that facility ceases to accept payment from the program. This bill is currently pending

in the Texas House Human Services Committee.⁵

Medicaid's community-based alternatives program is designed to allow patients to receive care at home, or in some cases, an AL facility, and still receive assistance through the Medicaid program. ALC

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