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Sonya A. Sterbenz
Virginia Commonwealth University

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Case Study: State Regulation of Assisted Living Facilities

by Sonya A. Sterbenz

Sonya Sterbenz is a Master’s student in the VCU Gerontology Department, a research assistant at the Virginia Center on Aging, and a public policy intern at the Virginia Association of Non-Profit Homes for the Aging (VANHA). Her case study follows from a current VANHA project on Special Care Units in Assisted Living Facilities and a review of assisted living regulations.

Educational Objectives

1. To define the role of assisted living facilities in the continuum of long-term care options for older adults.
2. To present the various arguments concerning the regulation of the assisted living industry.

Background

The U.S. Small Business Administration has identified assisted living as the fastest growing small-business dominated industry. Assisted living is conceptualized on the continuum of long-term care between home care and skilled nursing care (Dewey, 1994). By occupying this place in the continuum, assisted living may help ward off premature or unnecessary nursing home admissions by offering another alternative (Widdes and Bruck, 1995). The growth of assisted living can be linked to “the changing nature of nursing facility services” (Dewey, 1994). An increase in populations of very sick people in nursing homes created a need for a long-term care option for people requiring less care.

Assisted living is variably defined by states, organizations, and individual facilities. The Assisted Living Facilities Association of America (ALF AA) defines it as "a special combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living. Supportive services are available, 24 hours a day, to meet scheduled and unscheduled needs, in a way that promotes maximum dignity and independence for each resident and involves the resident's family, neighbors and friends" (Buckwalter, Leibrock, and Klein, 1996).

The hallmarks of assisted living are a consumer-driven approach, residential and home-like versus institutional qualities, innovation and flexibility in accommodating special populations such as Alzheimer’s patients, a socio-behavioral rather than medical model of care, and an emphasis on patient autonomy. However, because assisted living is considered long-term care and provides some of the services provided in the nursing home setting, it has come under intense scrutiny for regulation.

The level of state regulation has become a controversial issue in recent years. Opponents of regulation argue that increased regulation will erode the unique qualities of assisted living facilities listed above, forcing them to become more like nursing homes. They believe that increased regulation will deprive
facilities of the flexibility they currently have to do things differently than nursing homes, and in particular to provide care for special populations such as Alzheimer's patients. Proponents of regulation believe that more stringent standards of care will both ensure a minimal level of care and result in higher quality care. Concerns about the safety of residents and the quality of care provided in assisted living facilities has led to the move for increased regulation of assisted living facilities. (Such concerns may have been motivated by cases of inhumane care of older adults in long-term care facilities.) However, the regulation issue cannot be categorized simply as a case of the assisted living industry versus policymakers. The controversy surrounding assisted living has also split the industry itself. The following case studies provide examples of just two of the many opposing views regarding assisted living regulation within the industry itself.

Case 1: Supporting Assisted Living Regulation
As an administrator for an Alzheimer's Special Care Unit in an assisted living facility, Mary M. is concerned about the quality of staff that facilities will hire when there are only minimal standards that applicants must meet to qualify for positions on Special Care Units. While Alzheimer's and dementia care require special training for Direct Care Staff, current standards require only four hours per year of dementia-specific training. Administrators are required to have only twelve hours of dementia-specific training per year. Mary would like to see more stringent training standards for staff on Special Care Units.

Case 2: Opposing Assisted Living Regulation
As a nurse on a Special Care Unit in an assisted living community, Jodi K. often becomes frustrated by the limitations imposed by regulations. A crisis recently occurred that Jodi felt could have been avoided. Mrs. L., an Alzheimer's patient who has resided on the unit for six years, and whom Jodi has watched deteriorate, wandered off the unit and outside the building. She was found two miles away on the other side of the highway early the next morning. In the state in which Jodi works, regulations prohibit units from being locked or having security measures to prevent patients from wandering away from the unit. If the regulations had not prohibited security measures, perhaps the whole traumatic experience would not have happened. Now both the staff and Mrs. L.'s family are constantly concerned about her safety.

Note: Currently, Virginia regulations do not prohibit the use of security measures or locked units. Regulations differ by state, and this case outlines a situation in which flexibility in providing for resident safety is reduced by the nature of the existing regulations.

Discussion
Both case studies describe Special Care Units (SCUs) or Alzheimer's units because the question of regulation in assisted living facilities has particular importance for these units. SCUs in assisted living facilities are not subject to strict nursing home regulations, and can use their flexibility to provide innovative environments for Alzheimer's residents. For example, SCUs might wallpaper the doors, thereby disguising the doors to discourage wandering residents from entering other residents' rooms. SCUs might also create a home-like environment for Alzheimer's patients with props to trigger
memories such as old typewriters, black and white pictures on the walls, and old music playing. The fear is that regulation will be taken to the extreme and prohibit this type of environment.

Alternatively, regulations might be viewed as a method of quality assurance in the assisted living industry. However, there is conflicting research regarding the relationship between regulation and quality of care. Although nursing homes are often looked at as examples of the benefits of regulation, nursing homes are not without their quality problems. The relationship between regulation and quality in the nursing home industry is still questionable. Since a causal relationship between the intensive regulation of nursing homes and the quality of care provided is not clearly established, some policymakers may question whether increasing regulation will assure quality care in assisted living facilities. Further research is needed to address how effectively regulations serve the goals of the assisted living industry, and how regulations can best do so. It is difficult to predict the extent to which increased regulation will change assisted living; some see such increases as potential threats to the facilities, others see them as necessary for consumer protection. More regulations might move assisted living towards nursing home care in the long-term care continuum.

Another argument opposing regulation suggests that quality care can be assured through market forces that allow consumers to make educated decisions about choosing assisted living facilities. In this line of reasoning, facilities need to compete for consumers by offering the best care and services. However, this assumes that information regarding the services provided and the quality of care offered is available and that consumers have easy access to it. It is important for consumers to take a proactive approach in obtaining this information, as it may not always be easily accessible.

An underlying ethical debate between beneficence (protecting residents) and autonomy (allowing self-determination and risk-taking) is seen in the discussion over assisted living regulation, especially in special care units caring for persons who might have difficulty making decisions (Buckwalter et al., 1996). At what point does a facility stop protecting a patient and allow him or her to take risks? This question is not easily answered. The trend in long-term care has been to sacrifice some autonomy for safety, particularly in nursing homes. These debates on the ethics of long-term care should continue as we struggle to find the best way to serve the public good.

At a fundamental level, the issue of assisted living regulations can be simplified into this dichotomy: a) regulation of assisted living facilities is needed because medical care is being provided, and b) regulations should not be allowed to undermine the basic premises (innovative, flexible, and modeled on a socio-behavioral model) motivating the creation of assisted living in the first place. Perhaps the ideal situation is offered in the words of Buckwalter, Leibrock, and Klein (1996), "the standards for assisted living should not allow substandard care, but neither can the regulatory mechanisms so restrict care as to recreate nursing home conditions. Accountability must be based on some type of outcomes system that permits innovation while maintaining quality."
**Study Questions**

1. Discuss the pros and cons of regulating the assisted living industry. What specific issues should or should not be addressed in such regulations?

2. In a regulated assisted living facility, how can flexibility and innovation in long-term care be maintained while assuring the health and safety of all residents?

**References**

